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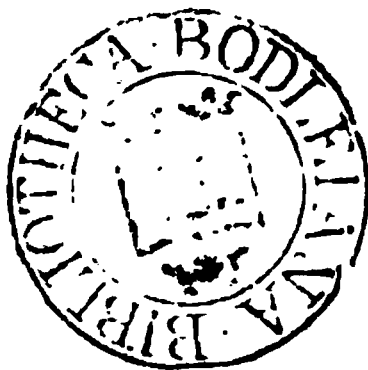
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PREFACE TO THE SECOND EDITION.

THE new Rules alone, without the many recent enactments, as for example The Married Women's Property Act, or important new decisions like *Lyell v. Kennedy*, have made the previous edition of this book less useful than it was when published. The mere fact therefore of its appearing in a second edition needs no apology, although the form which it has now taken requires perhaps some explanation.

It is an attempt to present in a readable form what recent judicial orders and decisions have taught as to the career of an action under the practice which obtains at present, together with suggestions as to the alterations that will be effected in October next. The latter are at the time this edition goes to press necessarily incomplete; and the decisions that another year's reports will furnish as to the working of the New Code can alone perfect the undertaking. The form in which it is now presented to the reader, if contributing to its attractiveness, makes it lose something of methodical arrangement. The references to the pages of the Hints on Practice under the various New Rules as well as to the old ones are intended to make up for this; while in order that the reader may "start fair" upon his study of the new system, the late practice which we know and the new which can but be con-

jectured as yet, have been as far as possible kept distinct. It will be well for the practitioner to read the New Rules through before he makes up his mind as to their effect, and if he reads this book first, he will, I think, be in a fair position to appreciate the effect of the New Code upon the present system of practice. If he afterwards notes up the Rules and so makes a commonplace book for himself he will be adopting a good plan for mastering them in detail.

The book lays no claim to any other originality than that of the design to focus scattered knowledge into as telling a group as possible, while avoiding the modern fault of seeking to cover emptiness of thought by strangeness of expression.

As, however, the edition leaves my hands so short a time after the publication of the New Rules I cannot but fear that errors both of commission and omission exist in it. It is believed, however, that they are not serious enough to really inconvenience the careful reader, for whose help it is chiefly designed.

Upon the scheme of the book itself, which it is desired should be as useful an aid as possible for practical workers, and also upon the hints as to the reforms in procedure still to be desired which are to be found at the end of the appendix, I shall be truly thankful for and will acknowledge practical suggestions.

9, OLD SQUARE, LINCOLN'S INN,
August, 1883.

PREFACE TO THE FIRST EDITION.

THE object of this little book is simply, as its name implies, to give practical hints upon some of the difficulties an action encounters in its passage through its various stages. Heretofore these stages have been as marked as Shakespear's Seven Ages of Man; but now only conjectures can be offered as to what they will be when the recommendations of the Legal Procedure Committee are acted upon, and this book is meant to supply some of these conjectures.

One thing seems certain, and that is, that they follow in the steps of the Judicature Acts in assimilating the practice of the Chancery and Common Law Courts. This will no doubt be further assisted by the opening of the New Law Courts; as those who now practise habitually in Lincoln's Inn will not have to sacrifice the time a visit to Westminster or Guildhall takes up for a solitary case, but will be as much in their own forum on the one side as on the other.

The appointment, too, of counsel from the Equity Bar, like Sir Ford North, as Common Law judges, and the

mixed constitution of the Court of Appeal, cannot fail to lessen the distinction which it must be confessed still obtains between the Temple and Lincoln's Inn; while the falling off of work on Circuit and the establishment of local bars, will make the young lawyer look out for work in Equity and Common Law Courts in London indiscriminately, rather than on Circuit and at Westminster as heretofore.

I have myself felt the want of a book treating of the general similarities of practice rather than of the differences which still exist; and for this reason the Equity and Common Law practice has been here carefully compared, where practicable, so as to illustrate the latter by the aid of the former. It has been got ready somewhat hurriedly for the press, in order to prepare the way for the new Rules; and those who use it must accept this apology for at least some of its shortcomings. If it appear to be of any general use, no effort will be spared to render it much more complete and to make it a thorough manual of the new practice, rather than simply stray hints upon so large a subject. Nevertheless, as it stands it is of permanent use; for however capable of improvement it may be, the careful and lengthened comparison of the present system with the intended operation of the new Rules contained in it must ever be of value to explain the application of the Rules themselves when they come into actual operation.

Whenever it has been practicable, the conclusions as to the effect of cases have been drawn from the judgments of the learned judges as given in the Reports, rather than from the head-notes of cases, which are so often incomplete, and sometimes even misleading. It is difficult

to draw conclusions which can be succinctly expressed with accuracy, from several cases upon different phases of the same subject, and I am perfectly conscious of having often repeated myself, even in the chapters of this short book, but attempts will be made to rectify this in another edition, and I shall be thankful for any suggestions or corrections that may be sent to assist me in so doing.

As, however,

*Multa fidem promissa levant ubi plenius aequo
Laudat venales qui vult extrudere merces*

I will only add, that if this book gives information, which through lack of time, opportunity, or inclination to go to large volumes like Daniel or Archbold, would have been wanting to any young practitioner or student, I shall feel that it has done something for the cause of legal education, and that one object with which it has been written will have been attained; namely, to assist in the work which was begun so well by Mr. Harris in his admirable *Hints on Advocacy*, in the steps of which this little book is intended to follow; and to attempt to do for Practice what he has done for Advocacy.

It is but fair to say that Messrs. Andrews & Stoney's edition of the Judicature Acts has been constantly in my hand, and that I have been put upon the track of many cases by it. The new Digest of the Law Reports, as well as the admirable one of the Law Journal Reports, have also been of great assistance.

A. R. W.

9, OLD SQUARE, LINCOLN'S INN,
June, 1882.

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HINTS ON PRACTICE.

CHAPTER I.

BEFORE ACTION.

It is by no means an easy thing to state succinctly, and yet without leaving out material points, the story of a client's wrongs, that the pleader may advise as to their remedy. And perhaps it is for this reason that a writ is frequently issued, and the matter gets to him for the first time with instructions to draw the statement of claim. The more rational course is for him who draws the pleadings to endorse the writ, and to advise in what Court and upon what lines the action shall be framed. It is certainly no more trouble in the long run, as the same instructions which are given in order to obtain the opinion on the case will furnish material for the drawing of the claim. Pleader should endorse writ.

It is true that the writ can be amended by leave at any stage of the proceedings (O. 28, r. 1, and O. 16, r. 13); but it is obvious that the better course is to being, if possible, in the way in which it is intended to Amendments.

Premature issue of writ.	carry the case to trial. Not only is the cause of action sometimes incomplete at the time of the issuing of the writ, for subsequent events do not complete it, but it often happens that there is something which, if done before action brought, would improve the plaintiff's position. For this reason it is always well before the issuing of the writ to set out the facts down to date. Moreover, there are cases in which a notice of action is requisite, as for instance in actions against constables or justices of the peace for anything done by them in the execution of their office (see Addison on Torts, ed. 5, Notice of Actions), or where particulars have to be furnished as in the case of an action for injuries under the Employers' Liability Act. The form in which the notice should be given, as well as the method of service, should always be sufficiently considered, as for example that the one under that Act is in writing (43 & 44 Vict. c. 42, s. 7), and gives the name and address of the person injured and states the cause and date of the injury. This must be served on the employers or delivered or served by post.
Notice of action.	
Other notices.	
Employers' Liability Act notices.	
Demand.	In actions for breach of contract, as also in trover, a demand and refusal are often necessary: Chitty on Contracts, ed. 10, 661.
Sanction of Court.	Sometimes, too, the previous sanction of the Court is necessary, as where the intended action is for the benefit of an estate which is being administered, or where a receiver has been appointed. Furthermore, an action must not be premature or it may be vexatious. Thus in <i>Hilliard v. Harrison</i> , 21 Ch. D. 69, C. A., the sheriff seized under a fi. fa. against a son goods belonging to his father. The father gave verbal notice to the bailiff that he claimed the goods, and
Action premature.	
Plaintiff's solicitor.	

the next day the sheriff issued an interpleader summons. Meanwhile the father, who was a solicitor (see *In re Swire, Mellor v. Swire*, 21 Ch. D. 653, where the late Master of the Rolls said that it makes no difference that the plaintiff is a solicitor when the Court is satisfied that the suit is not instituted for the purpose of making costs), had commenced an action against the sheriff claiming an injunction restraining him from remaining in possession. Here as the father ought to have waited to see the result of the interpleader proceedings, he had to bear the costs of the motion for an interim injunction, which had been granted by V.-C. Hall. See also *Glen v. Gregg*, 21 Ch. D. 513.

Again, in a writ issued on the spur of the moment, Fraud. and under the influence of strong feeling, fraud is sometimes charged inadvisedly. Where fraud enters into the cause of action before the writ is issued, much thought should be bestowed upon the question whether the relief sought shall be based on the fraud, or whether the charge of fraud shall be only subsidiary, or whether, on the other hand, there should be no allegation of fraud introduced. The Reason being that if the relief sought by the action is based on fraud the failure to prove it is fatal; but if by striking out of the action the charge of fraud there is sufficient equity stated or proved, and the charge of fraud is only subsidiary, it is a matter only affecting costs: *London Chartered Bank of Australia v. Lempriere*, L. R. 4 P. C. 573. Result of charging.

Even if the plaintiff succeeds in obtaining the relief prayed for, and has the costs of the suit generally, but fails to establish the allegations of Allegations not established.

fraud, he must pay the costs occasioned by such allegations having been made (*London Bank of Australia v. Lempriere*, referred to above); or for the sake of simplicity no costs will be given to either side, where but for the allegations of fraud the plaintiff would have been entitled to the costs: *Cullingworth v. Lloyd*, 2 Beav. 385; *Rawlins v. Wickham*, 6 W. R. 509. But if a man makes statements which are not true, and which he ought to have known were not true, if he does so he is liable to an action for deceit. He cannot be allowed to escape merely because he had good intentions and did not intend to defraud. In such a case charging fraud would be a mistake; yet supposing the statements were contained in the prospectus of a new company (when there is the authority of Lindley, L.J., in *Smith v. Chadwick*, 20 Ch. D. 80, for saying that we have prospectuses varying in point of fraud in every conceivable degree, many of them being tissues of lies from beginning to end), many persons might charge fraud in the writ in an action for damages for having been induced to take shares in a company, without first seeing whether those who were responsible for the consequences knew that the prospectus was fraudulent or not. This should, of course, first be ascertained, or the penalties mentioned above as to costs may be incurred. In a word fraud should never be assumed. For example, when a bonâ fide and honest instrument is executed, for which valuable consideration is given, and the instrument is one between relatives, the Court cannot say that the difference between the real value of an estate and the consideration given for it is a badge of fraud: Fry, J., In re *Johnson*, *Golden v. Gillam*, 20 Ch. D. 397. And a general allegation

Action for
deceit.

Pro-
spectus of
company.

Fraud not
to be
assumed.

of fraud is often insufficient to amount to an ^{General allegation.} averment of which the Court ought to take notice: *Wallingford v. Mutual Society*, 5 App. Ca. 686. And as to pleading fraud, see O. 19, rr. 22 and 23.

And even in the simple case of an action to ^{Action for debt.} recover money paid for another person from that person or his representatives, it must be first seen that the purpose for which the money was paid was a legal one. If the act was illegal, as in the case of *Williams v. Williams*, 20 Ch. D. 667 (the cremation case), the money cannot be recovered. This should be thought out before the writ is issued.

Supposing, however, that all the material facts relating to a wrong done to a man, for which there is a remedy at law or in equity, are laid before the pleader, the first thing for him to consider is what that remedy is, or if more than one, whether they shall be jointly sought; and the second, whether the present is the time to seek it, having regard among other things to the Statute of Limitations. See *Heath v. Pugh*, 7 App. Ca. 235. Afterwards it must be determined whether the relief is to be sought on the equity or common law side. Indeed, the press Court of business before certain judges in the Chancery Courts often made it desirable if a speedy trial was desired to consider carefully the very judge in whose Court it should be intitled. By O. 5, r. 9, actions are in future to be assigned to the judges by rotation. And now whether a writ is issued in the Chancery ^{Choice of judge.} Courts or on the common law side does not so much matter as it used to do, for parties have now no such vested interest in a defence arising from a defect of jurisdiction in a particular court as ought to be saved,

especially if that defect is removed during a pending suit: *Hurst v. Hurst*, 21 Ch. 295, and Judicature Act 1873, s. 23, ss. 3.

Bank-
ruptcy
Court. See
p. 57.

And as to what questions arising in any case of bankruptcy should be tried out in the Bankruptcy Court, and what should be allowed to be tried in the High Court, see *Ex parte Armitage*, 17 Ch. D. 13, and *Ex parte Price*, *In re Roberts*, 21 Ch. D. 556.

One object
of sending
case to
counsel.

Having made up his mind on these subjects, the pleader should express himself decidedly, giving his reasons; and remembering that it is not impossible that one of the objects of the case having been sent to him was to get an opinion from counsel which could be shown to the client himself.

Confident
opinion.

It is well known to solicitors that there are difficulties surrounding almost every question, which make it impossible to speak with absolute certainty about it. It is, however, a bad beginning for him who advises to appear to mistrust himself; and in giving his reasons counsel should clearly indicate which of two courses (should he suggest more than one) is the better to adopt, and this opinion he should give firmly together with authorities for it.

Primâ
facie
right may
be re-
butted.

Instance.

It must, however, never be forgotten in advising litigation that because a person seems primâ facie to have a right against another person *ex debito justitiæ*, that primâ facie right may be rebutted. A good instance of this was *In re Great Western (Forest of Dean) Coal Consumers' Co.*, 21 Ch. D. 769. There Fry, J., decided that the primâ facie right of an unpaid creditor of a company to a winding up order is rebutted, when it is shown that a large mass of other creditors oppose the making of such an

order. This then is a point that should be ascertained before incurring the expense of putting on a petition.

It is also well to state in the opinion on the case ^{Costs of endorsement of writ.} what the endorsement on the writ ought to be, whether expressly requested to do so or not. It can do no harm, and is really part of what should have been asked at this stage. The costs of the indorsement on the writ will often be allowed in London, at least on the equity side; but in many district registries this is not so. The most important step in an action is the issuing of the writ, and the endorsement upon it may sometimes be the only necessary pleading. It is suggested that the costs of settling it by counsel should be allowed in every case in the Chancery Division in a party and party taxation: and interlocutory applications with reference to it discouraged.

Especially in chancery it now often happens that ^{Interlocutory applications.} immediately upon the issue of the writ, some interlocutory application is desirable. For example, for ^{See O. 52, r. 3.} the appointment of a receiver or for an interim injunction, as, for instance, in an action by an equitable mortgagee for sale or foreclosure, to restrain dealing with the legal estate till next motion day. In the case put an affidavit would certainly be necessary, stating the grounds of the belief that the defendants intend to part with the legal estate pendente lite: *London and County Banking Co. v. Lewis*, 21 Ch. D. 490. This was done under Order 53, r. 8; and it must be noticed that in vacation leave ^{Vacation.} can only be obtained from the judge himself and should not be given by a chief clerk. If, however, an order giving such leave, although made in chambers, has been formally drawn up, such order

will be valid as being an order of a judge: *Conacher v. Conacher*, 1881, W. N. 2.

Leave to
serve short
notice of
motion.

In such a case an *ex parte* application should be made at the sitting or at the rising of the Court of the judge with whose name the writ is marked—perhaps the best time is immediately after lunch—for leave to serve short notice of motion for the desired purpose with the writ. This is generally granted as of course. See, however, *Dawson v. Beeson*, 22 Ch. D. 504; 31 W. R. 537, from which it appears that the leave given must be strictly complied with.

Brief to be
given to
registrar.

Care should be taken that the brief, endorsed by counsel, is handed to the registrar at the time, to make a note of such leave having been given as endorsed on the brief.

Writ must
be issued
before
application
made.

As to these applications, it may further be remarked that, if the judge to whom it is desired to make the application has left his Court, he will yet not unfrequently grant it, if the brief is handed to his clerk while he is still in his private room at his Court. Care should be taken that the writ in the action has been actually issued before the application is made, as if not, a second application becomes necessary when this omission has been discovered, with the costs of which the opposite party cannot be saddled.

Usual
under-
taking
as to
damages.

Ex parte injunctions and other applications, the result of which might cause injury to the other side, are only granted upon an undertaking by the party obtaining them to be answerable for the amount of such injury, should it afterwards be ascertained that they were unnecessary; and a plaintiff cannot discontinue without paying the damages to which he

has thus rendered himself liable; and if he has obtained an interim injunction upon the usual undertaking as to damages, a reference as to the amount of such damages will be ordered. This order will be obtained on motion, and several months, perhaps even a year, after the date of the discontinuance will not be too late: *Newcomen v. Coulson*, 7 Ch. D. 764. As to the effect of delay in an application to enforce an undertaking, see *Ex parte Hall*, Solrs. J., June 9, 1883, p. 532, and see p. 252. Damages how estimated.

Whether damages can be given unless there has been some default on the part of the party obtaining the injunction (as, for instance, that there could be no remedy when the party obtaining the injunction turned out to have no title, unless he had been "guilty of misrepresentation or suppression) is not yet decided, although the late Master of the Rolls evidently thought they could not: *Smith v. Day*, 21 Ch. D. 421. See the remarks of James, L.J. in *Gresham v. Campbell*, 7 Ch. D. 490, and *The Teign Valley Railway Co. v. Southwood*, 19 W. R. 690. When damages not given.

With regard to the form of the endorsement on the writ, sec. 1 of part 2 of Appendix "A" to the Judicature Acts, gave the general endorsements in matters assigned to the Chancery Division, to some of which a claim for a receiver, injunction or account, or all three, may be added with advantage. It must be carefully considered whether the whole of the remedy required is asked for by the writ, in case a statement of claim should not be required, and judgment be obtained upon a motion for judgment. Thus in an action for foreclosure, a claim for possession should be added: *Wood v. Wheeler*, 22 Ch. D. 282. Sec. 2 gives the endorsement in money claims Form of endorsement.
Writ should ask for everything desired.

(not being special); sec. 4, those for damages and other claims; sec. 7, special endorsements under Order III., r. 6 (see O. 20, rr. 1, 2), and sec. 8, the endorsement of character of parties; but more on this subject will be found in the chapter upon Writs of Summons.

See Chap.
3.

Other
methods of
getting
relief.

Applica-
tion for
umpire
under
Common
Law
Procedure
Act.

It used to be the old custom to issue a writ in a matter, so as to be first in the field. Before doing this, however, and so pledging the client to one groove, or else rendering him liable to pay the costs of discontinuing the action, the safest way is to assure oneself that there is no short cut by which what is wanted may not improbably be obtained. Thus, A. enters into a binding contract with B., to take over certain property at a price to be ascertained by two valuers or their umpire, in the usual way, or failing this to pay such price therefor as may be reasonable. The valuers quarrel, no umpire is appointed, and A. and B. are at a dead-lock. In such a case, before instituting a suit for specific performance under the second half of the above clause, why not apply by summons, under the Common Law Procedure Act, to a judge to appoint an umpire? Malins, V.-C., did it In re *Metropolitan Building Act*, Ex parte *McBryde*, 4 Ch. D. 200, 206, and it has been done since in unreported cases.

If an umpire is appointed, a value will be fixed probably within a short time, and in effect everything will have been obtained that could be got by the expensive machinery of a suit for specific performance. Moreover, if such a summons is opposed, the Court, though it has not special power under the Act to give the applicant costs, will do so upon the principle that if a vexatious litigant will oppose what he is not justified in opposing, the other party shall have costs. See O. 55.

But it does not invariably follow that speedy justice is obtained by summary methods. It was supposed that section 9 of the Vendor and Purchaser Act, 1874, would afford a panacea for all wrongs which came under it, that would take effect at once, but a case like *In re Burroughs, Lynn & Sexton*, 5 Ch. D. 601, shows that this is not so. The section enacts that a vendor or purchaser of realty or leaseholds in England or their representatives, may apply summarily to a Chancery judge in chambers, as to any requisition or claim for compensation, or other question connected with the contract (not affecting the existence or validity of the contract), and the judge may dispose of the same with or without ordering costs. In the case quoted the sale took place on May 6th, 1873, and a summons was taken out on May 25th, 1875, to have it declared that the purchaser's requisitions had been sufficiently answered. Affidavits were filed by both parties, and several of the deponents were cross-examined. The late Master of the Rolls on November 25th, 1876, refused to hear the evidence upon the affidavits filed since the summons was taken out and the cross-examination on such affidavits, and held that a good title had been shown. On the case coming before the Court of Appeal on April 14th, 1877 (four years after the sale), it was held also that a good title had been shown, but that the evidence rejected by the M.R. was admissible, for whatever could be done in chambers, upon a reference as to title under a decree, could be done upon proceedings under this Act. This case is noticed, not as being likely to be again in point, as the learned judges in the Court of Appeal stated in their judgment that the effect of this section was to shorten proceedings by doing away with

Vendor
and Pur-
chaser
Act, 1874.

Sec. 9.

As to
sufficiency
of answer
to requisitions.

Evidence
on such
summons.

the necessity of a suit and by ordering an immediate reference to chambers, which could before only have been obtained after decree ; but to show that until the working of a new Act has been ventilated by a little useful litigation, the remedy attempted to be got under it may tarry in its coming. This observation does not apply to O. 55, rr. 3—12.

Effect of
Vendors
and Pur-
chasers
Act.

It may be further said with reference to the Vendors and Purchasers Act that it was intended to enlarge the summary jurisdiction of the Court. Questions as to whether a requisition has been properly answered, or whether it is precluded by the conditions of sale and the like, should be tried under it, but not disputed questions of fact. Indeed whatever could be done in chambers upon a reference as to title under a decree where the contract was established can be done under the Act. It has in fact enabled a suit to be dispensed with, and allowed the parties at once to put themselves in chambers in the same position in which they would have been, and with all the rights they would have had, under a decree. For example when a fatal objection to the title has been upheld by the Court upon a summons under this Act, the purchaser's costs of investigating the title were ordered to be paid by the vendor by V.-C. Hall, although he said himself that he doubted the jurisdiction of the Court to order them: In *re Higgins & Hitchman*, 21 Ch. D. 99.

Costs of
investigat-
ing title,
when
ordered.

Convey-
ancing
Act.

The summary jurisdiction of the Court under the Conveyancing Act, which can be obtained on summons, must not be forgotten, an example of which was In *re Lillwall's Settlement Trusts*, 1882, W. N. 6, nor that which it exercises over solicitors as its officers. See Hints to Solicitors, Ch. ii.

It may perhaps be convenient to state here, that before the assistance of the Court can be obtained where no suit is pending, and no statute gives the right of proceeding upon petition or summons, that the issuing of a writ is a necessary preliminary. There is however an exception in the case of certain matters regarding infants which can be done upon petition. Motions can only be made by the plaintiff or defendant in an action. Appeals to all Courts, except the House of Lords, which latter appeal is by petition signed by two counsel, are by motion.

Method of
obtaining
assistance
of Court.

Writ
necessary.

Motions.
Appeals.

Assuming, however, that the case laid before counsel does not, in his opinion, resolve itself into one in which any summary application should be made (and here it may be observed that, if upon careful consideration of the papers sent he comes to the conclusion that some summary application ought to be made, he should communicate forthwith with his client, and not wait to advise on the case ; and of course, if he wants further information, he should ask for it, and not advise, as is sometimes done, upon a hypothetical case) he must set himself to what is usually called the advising on the case.

Summary
applica-
tions.

When
further
informa-
tion
wanted.

The advantages of sending a case to counsel direct, without the intervention of the London agent, must here suggest themselves to the country solicitor. He is able to choose the counsel to whom he will go, and to communicate with him by letter upon any little point that may have accidentally escaped his notice, or which may have come to the knowledge of his client subsequently to sending off the case ; and thus delay is avoided and expense saved.

Country
clients.

For obvious reasons, however, the London agent will not endorse this recommendation, which is, nevertheless, now very generally acted upon.

Advantage
of direct
communi-
cation
between
country
solicitor
and client.

Direct communication with the client is advantageous, too, where there may be no cause of action, although the ultimate client, who is probably known to the country solicitor, may have suffered a wrong; as this should be thoroughly explained through as few channels as possible, for it is not sufficiently understood by those who embark in litigation. Too often the client finds himself engaged in an action without realizing it or understanding the consequences that may follow. It often appears for the first time from the judgment that there was really no cause of action, and not that the evidence in support of the alleged cause of action was insufficient.

Where no
cause of
action.

Where
negotia-
tion as dis-
tinguished
from
contract.

For example, in a case of negotiation as distinguished from contract, there can be not only no decree for specific performance, but no action for damages: *May v. Thomson* (the sale of a medical practice), 20 Ch. D. 706. In such a case what would be the use of an action? This should be told the client. It could have been learnt from his evidence if properly sifted.

Action
partly
good and
partly bad.

Again, an action may be partly good and partly bad, as in *In re Count D'Epineuil, Padman v. D'Epineuil*, 20 Ch. D. 759, where it was held that a written instrument charging "all his present and future personalty" to secure to the plaintiff such future debts as might be incurred to him, availed only to charge the property of the debtor at the time of the making of the instrument.

Moreover, an application must not be addressed to

the Court to do a thing which in itself it might be most desirable to have done, and which indeed should, if possible, perhaps be done, without ascertaining first that the Court has jurisdiction to make the order it is asked to make. For instance, the Court will not give the trustees of a settlement of monies to be invested in land power to expend part of the capital monies in necessary repairs, although houses on part of the property already bought may be tumbling down: see *Drake v. Trefusis*, L. R. 10 Ch. 364, and *In re Leslie's Settlement Trusts*, 2 Ch. D. 185, where the true rule is given; and in the case of an infant, *In re Jackson, Jackson v. Talbot*, 21 Ch. D. 186.

Again, the Court will not make an allowance out of a lunatic's estate, however superabundant for his support, to one of his next of kin who is in very distressed circumstances and a very fit object of charity (as for instance an aged cousin a clergyman), unless, perhaps, in the case of a brother or sister or child. And yet the Court may authorise such expenditure in connection with his property as a contribution towards the building of a church, because the erection of a church increases the value of the house property in the neighbourhood: *In re Evans* (a person of unsound mind), 21 Ch. D. 299. Such an application as this, therefore, ought never to be attempted.

Another misapprehension is because a case is a hard case that therefore a Court of equity can necessarily give relief, even if a plausible reason for so doing is forthcoming. Thus when the trustees of a marriage settlement which authorised them to invest in the shares of a trading company bought bank shares

When
Court can-
not relieve.

which were transferred into their names, and the articles provided that the bank should have a first charge on the shares of any shareholder for monies owing to it from him alone, or jointly for any other person, and when a share was held by more than one person for monies owing from all or any of the holders. One of the trustees was a partner in a firm which owed the bank a debt which had arisen long after the purchase of the shares. In such a case the bank has a lien on the shares for the debt of the firm, however hard it may seem to be: *New London and Brazilian Bank v. Brocklebank*, 21 Ch. D. 302; and no application to the Court could benefit the cestuis que trustent. These are simply instances of cases in which litigation may be rushed into without hope of ultimate success; and this need not have been done if all the circumstances had been ascertained and considered beforehand.

Adminis-
tration
action.

When time
essential.

Again, if the relief required must be obtained within a given time to be of practical use, it must be ascertained that the method by which it is sought will admit of the required amount of expedition. For example, it is no use to institute an administration action unless the time it will take is a matter of no moment. The procedure in the offices of the chief clerk, the registrar, the Chancery paymaster, and, finally, of the taxing master, are quite sufficient to account for delay without laying any blame on the adjournments often pressed for by the other side.

It should not be advised either to bring funds into Court unless there is reasonable ground for so doing; as the leaning of the Court has lately been rather to get rid of a fund where there are proper

trustees to take care of it: Hall, V.-C., In re *Braithwaite*, *Braithwaite v. Wallis*, 21 Ch. D. 121.

Finally, if it is all important to the applicant that his application to a Court, if made, should be successful, he should be advised accurately as to the difficulties of his case, and as to his chances of success in it. How can a strong opinion be given on either one side or the other in a case like In re *Clarke*, 21 Ch. D. 823, where Kay, J., said at the commencement of his judgment that a case of that kind certainly placed the Court in as great a difficulty as any case which ever came before it? This is quite a different class of case to that in which an application is made to the Court under some rule and order. There the loser is penalised by having to pay costs, but that is probably the measure of the loss he has incurred. In an important matter and one of great difficulty the client should be fully apprised of the difficulties to begin with. If he, after having learnt them, then elects to go on, that is his affair. This subject will be continued in the chapter which follows, called "Advising on Case."

After October 24, 1883, great care will have to be taken in advising the institution of a general administration action, as a summons at chambers can determine almost any question affecting the interests of a creditor legatee next of kin, or which arises in the administration of an estate or trust. See O. 55, rr. 3—12.

policy have been decided judicially not to be so ; as, for instance, a covenant not to revoke a will: *Robinson v. Ommanney*, 21 Ch. D. 780.

What is not. As an instance of a contract not against public policy (viz., not to claim compensation under the Employers' Liability Act, even in case of death), see *Griffiths v. Earl of Dudley*, 9 Q. B. D. 357. As to actions by loan societies consisting of more than twenty members, not registered under the Companies Acts, upon promissory notes, which generally do not lie, see *Shaw v. Benson*, W. N. 1883, 108. Again, what is the effect of what is generally called compounding a felony is far from settled now. See *Flower v. Sadler*, 9 Q. B. D. 83.

Contract not to claim compensation under Employers' Liability Act, 1880.

Compounding a felony.

And what is unjust and unreasonable in a contract is not free from doubt. Leave to appeal is however generally given in such cases: *Brown v. Manchester and Sheffield Railway Co.*, 9 Q. B. D. 230.

What is unjust and unreasonable.

In advising on a case one of the first things to look at is the relation in which the parties stand to one another. Thus, in *Martinson v. Clowes*, 21 Ch. D. 837, the sale of property at auction under the direction of a building society as mortgagees to the secretary of the building society was held not to be maintainable. And yet there was no proof of undervalue, and the secretary bid perfectly openly. Contra, see *Boswell v. Coaks*, 23 Ch. D. 302.

Relations in which parties stand the one to the other.

Illustrative of the first difficulty referred to was the case of *Chard Bros. v. Jervis*, which was argued before Field, J., and Huddleston, B., in the Queen's Bench Division, on Feb. 9th, 1882. It was an appeal by a debtor from a committal order, in which it appeared that his wife was very well off, but that

Ex sequo et bono.

the appellant himself was an uncertificated bankrupt, who hunted and kept a stud of horses. The respondent was a judgment creditor for £29, for oats and other things supplied to him. The appellant's affidavit proved the circumstances of the case, and that since his bankruptcy in 1874 he had not acquired any money or property whatever, and that he was dependent upon his wife for whatever he had. Field, J., is reported in a morning paper of the following day to have said to appellant's counsel, "I am sure you are too much of a gentleman to approve of such conduct," in reply to an observation by him to the effect that there was no proof that the debtor had settled anything on his wife, and that the case was brought forward on a question of law, and not to uphold the transaction. Their lordships not only refused the appeal, but also declined to stay proceedings pending an appeal to the Court above. I ought perhaps to say that this case was overruled by the Court of Appeal afterwards, the reason being that the husband made an affidavit that he had not hunted for six years, that the horses he had were his wife's, and that he had no club. The fact, however, that it was overruled, does not affect its value for the purpose for which it is cited.

Courts will if possible decide according to abstract justice.

The case of *Knowlman v. Bluett*, L. R. 9 Ex. 307, illustrates this also. There a woman was to take care of seven of her illegitimate children, and their father was to pay her £300 a year for so doing. The arrangement was never revoked, and the plaintiff, having taken care of the children, sued for arrears due. There was no memorandum in writing of the bargain. It was said that the action was not maintainable, as being a contract

To avoid
techni-
calities
working
an in-
justice.

which was not to be performed in a year. Blackburn, Keating, Mellor, Lush, Grove and Archibald, JJ., agreed that, as the plaintiff had performed her part of it, it would be *unjust* if she could not obtain repayment of the sums she had expended; and although the declaration was in form upon a special contract, as she could have maintained an action for money paid at the defendant's request, to which of course the Statute of Frauds could not have been pleaded, a rule to enter a nonsuit was refused.

Executed
considera-
tion.

This case goes far to show that even at common law, in 1874, judges would strain a point, where it was possible to do so, to prevent a technicality working injustice (see also some remarks of the judges in *Quilter v. Heatley*, quoted at p. 18); and indeed, since the former case it has been generally thought that the Statute of Frauds does not apply when an action is brought upon an executed consideration. This, at all events, is the opinion of the learned editor of *Chitty on Contracts*, ed. 10, p. 70. If this is so, it seems to be simply a general application of the principle before alluded to. There is now so strong a tendency to decide cases upon *à priori* principles (see judgment of Bowen, J., in *King v. Spurr*, 8 Q. B. D. p. 108; also the judgment of Grove, J., at p. 105, in the same case), and to distinguish the circumstances of the case that is being tried from those of any other cited in argument, that it is apparent that any case which has a savour of injustice about it is not likely to be an object of favour to him upon whose decision it rests: See also the case of *Williams v. Mercier*, 9 Q. B. D. 337, on the liability of the separate estate of a married woman for debts contracted by her before coverture.

Judges
now judge
upon the
merits of
the case
itself.

This is particularly noticeable in cases like *Nevill* <sup>Bargains with ex-
pectant
heirs.</sup> *v. Snelling*, 15 Ch. D. 679, where the equitable principle of relief from an unconscionable bargain, entered into with an expectant heir, was applied to the case of money lent at exorbitant interest to a young man. In the case (*Flower v. Buller*) immediately before this, in the same volume of the Law Reports (15 Ch. D.)—the same judge who tried *Nevill v. Snelling*—Denman, J., is reported to have said, “That it was a natural and reasonable thing that, in <sup>What is
natural
and reason-
able.</sup> such straits as they then were in, the wife should be ready to raise money by any means which she might have, in order to pay off the debts that were encumbering her husband and herself in their married life,” and he accordingly made the order which natural justice required, that a liability had been incurred by a married woman to repay money borrowed under such circumstances, and that to secure such she could give a valid charge upon expectancies.

If the writer may be permitted to say so, he has <sup>Appeals
for costs.</sup> long thought that the discretion of a judge of first instance is now acknowledged by Appeal Courts to have grown not only in wisdom but in extent, and that it is now taken to have a jurisdiction quite unknown to the technical lawyers of old time. The rule as to there being no appeal for costs only is merely an instance of this. Jessel, M.R., in *Harp-
ham v. Shacklock*, says at p. 215 of 19 Ch. D., “If we were to vary the order of the Court below as to costs when an appeal on the merits fails, we should practically be allowing an appeal for costs only;” and again, in *Llanover v. Homfrey*, in the same volume of the Law Reports, he further observes, “We cannot

vary the judgment of the Court below as to costs. We must assume that the judge had some reason for not giving costs. He may have thought the pleadings too long, or the evidence excessive. They might have applied for leave to appeal as to costs." And if this is so, it appears now more than ever necessary to present a case to the Court savouring of justice and not of injustice; and if, unfortunately for the counsel, and still more for the client, injustice is there, to be quite sure that he can show that he has a right to a remedy that must be given him and cannot be kept away from him. See the judgment of Hawkins, J., in *Sharpe v. Birch*, 8 Q. B. D. 115:—"It is unfortunate in the present case that the affidavit is insufficient, because the bill of sale was an honest one, and yet a formal and technical objection must prevail. It is, however, desirable that the provisions of the legislature as to bills of sale should be strictly enforced."

Wording
of statutes.

And here it may be remarked, perhaps not inappropriately, that the judges still consider it their duty to follow the exact words of enactments, and not to make new ones. So that many cases of apparent hardship must be attributed to the wording of the statute, not to the feeling of the judges. Thus Grove, J., in *Moyle v. Jenkins*, 8 Q. B. D. 117, "We have not to frame the Act, but to interpret it." The same judge says, in *Richards v. McBride*, 8 Q. B. D. 122, "We cannot assume a mistake in an Act of Parliament."

Hard
cases make
bad law.

Nothing is more certain than that hard cases make bad law; see *In re Greville*, L. R. 9 C. P. 15, Jessel, M.R. in *Ex parte Webster*, *In re Harris*, 22 Ch. D. 139, said: "The present appeal is really a temptation to make bad law. It is a very hard case

indeed (cf. *Kirk v. Todd*, 21 Ch. D. 488). If I could so construe the Act as to decide in favour of the appellant, I should be very much inclined to do so. But that is not the province of a judge. His duty is to find out the meaning of an Act of Parliament without regard to the question whether it may not in this particular case produce a result which he may think contrary to the intention of the Legislature."

And in the construction of statutes, there is, of course, often much difficulty; but the rules regulating their construction are now pretty well laid down.

For example, to avoid extending the meaning of a statute to collateral effects and consequences beyond the scope of its general object and policy, especially if injurious to third parties, with whose interests it need not and does not profess directly to deal, Earl Selborne in *East and West India Dock Co. v. Hill*, 22 Ch. D. 23; or to avoid extending the meaning of the words "it shall be lawful" in a statute which mean nothing more than the words themselves imply, unless something in the context makes them words of obligation: *Julius v. Bishop of Oxford*, 5 App. Ca. 214; *Loosemore v. Tiverton and North Devon Ry. Co.*, 22 Ch. D. 41. See also the remarks of Cotton, L.J., in *Sutton v. Sutton*, 22 Ch. D. 518. In *Humphreys v. Green*, 10 Q. B. D. 160, Brett, L.J., said that there could be no judge sitting on the bench desiring to adjudicate between two parties who would not have strained every effort of his mind to give the judgment which was given in *Munro v. Fabian*, L. R. 1 Ch. 35, if he possibly could.

Construction of statutes. They must not be extended indefinitely.

In advising on case a difficulty of frequent occurrence is the liability of intermediaries. This difficulty generally arises from insufficient particulars of

Liability of intermediaries.

the circumstances being given. *Davis v. Artingstall*, 1880 W. N. 96, affords an instance of this. There the plaintiff sued the defendants, who were auctioneers, to recover the value of property, which was her own under the Married Women's Property Act, and which they had sold by auction by order of her husband. The judge held that the auctioneers had a possession of and a property in the goods, although they were not sold in their own rooms, and that they must be decreed to pay the wife the value of the goods sold. Surely in this case if the facts had been properly represented to the counsel for the defendants this action would not have been defended; as it appears from the report of the case that they had been indemnified by the woman's husband against the wife's claim. The relation of the parties therefore should always be carefully noticed, and the exact position of the party whom it is sought to charge ascertained at the outset.

Natural
justice
more ex-
acting than
rules of
equity.

Another good thing to remember in looking at cases is, that natural justice may be represented by a circle, concentric perhaps, but whose radius is far larger than even that of the circle representing equity as administered in our Courts, while that representing equity is greater in extent than that represented by common law and case law; statute law being a smaller one still.

I mean that there are many duties of imperfect obligation, as gratitude and kindness, of which even equity cannot compel the observance; and others, such as secret trusts, against which it has ever set its face. It would plainly, therefore, be useless to advise any application to a Court of Equity to enforce

a demand of any such duty, though none the less is it a matter of natural justice.

An instance of this is a case in which a plaintiff claims damages for an accident against a defendant as having a duty towards him to supply an article from the use of which no accident could happen. The question always is, whether he was under such obligation legally, although he might appear to be morally. See *Heaven v. Pender*, 9 Q. B. D. 307; *Ivay v. Hedges*, 9 Q. B. D. 80. Where legal liability exists.

These matters are represented by the largest circle, and by the next, matters assigned by the Judicature Act of 1873, s. 34, to the Chancery Division, as for instance the taking of accounts. It would be wrong to advise the issuing of a writ for one of these matters in a Common Law Court, as such a course might lead to an application for a transfer, which will be written of hereafter. Lastly, in cases specially provided for by particular statutes, as for instance the Bankruptcy Act, 1869, it would be manifestly wrong to advise an application for a demand which, though right according to the principles of the Equity or of the Common Law Courts, has yet, under the circumstances of the case, been specially provided for by that statute, as having to be sought in the Bankruptcy Court. Equitable relief.
Statutory relief.

Another illustration not inapt is, that each case resembles a star throwing out rays in every direction, and that its general effect cannot ever be ascertained until each one of its rays has been carefully traced. This is a quaint conceit, and as a foil to it, and so as to make it shine out more brightly, the practical way of looking at a case is next suggested. What is Another illustration.
Practical view.

the remedy wanted? Who is the man from whom it is wanted? What is his position relatively to the claimant? Can he give it? In other words, it is no good suing a man of straw. Let it be granted that judgment is issued and execution levied. Upon a return of nulla bona (except when equitable execution can be got, which will be treated of hereafter), not only can the client get no redress, but costs will have been incurred; so that he is in a worse position than he would have been had he never brought the action.

Action
should not
be brought
except for
specific
purposes.

The pur-
poses should
be ascer-
tained
first.

An action is often advised simply because it lies; but the purpose for which it is brought should not be lost sight of, viz., to obtain a remedy; for instance, debt and costs; and if it fails to do this it fails in its object, and should never have been advised at all. It may not be the duty of the counsel to prescribe a remedy, and to specify that it is only to be resorted to in the case of the defendant being able to pay; but it is suggested that when, as often happens, it appears from the facts as laid before him in the case that this will be the result, the adviser should take notice of all the circumstances. Again, if the person seeking relief is a man of straw, it is evident that upon his winning the case depends whether he can pay costs or not. In fact it is a wager action so to speak. This is not what is taught by the Court of Appeal in cases like *Harlock v. Ashberry*, 19 Ch. D. 84, the head-note to which states that the fact that an appellant would be unable, through poverty, to pay the costs of the respondent if the appeal should be unsuccessful, is in itself sufficient ground for requiring security for costs.

A common class of cases upon which counsel have to advise is the construction of contracts between parties where rules of law apply which must modify the language actually used by the parties, though the extent to which they do modify them has to be ascertained. The difficulty is not so much in knowing the rules, which have been settled and followed probably frequently before, but in exactly understanding them and the principles upon which they rest and applying them to the individual case. Thus, where a contract contains a condition for payment of a sum of money as liquidated damages for the breach of stipulations of varied importance, none of which is for the payment of an ascertained sum of money, the general rule is that the sum named is not to be treated as a penalty but as liquidated damages. This is well settled and involves no difficulty; but whether it would not be treated as a penalty if one of the stipulations was of very trivial importance, would depend upon the want of importance in such a case. And here there might be great difficulty. See *Wallis v. Smith*, 21 Ch. D. 243. All the parts of a document must be read together unless they are so inconsistent that this cannot be done: Brett, L. J., *Weston v. Managers Man. Ass. District*, 9 Q. B. D. 406.

The subject of accord and satisfaction, too, has given rise to recent litigation, the result of which should be understood. In *Goddard v. O'Brien*, 9 Q. B. D. 37, A. being indebted to B. in £125 odd for goods sold and delivered, gave B. a cheque for £100 payable on demand, which B. accepted in satisfaction, and this was held to be a good accord and satisfaction. The principle is that a creditor

Construc-
tion of
contracts.

Illustra-
tion.

Accord
and satis-
faction.

Principle
of.

cannot bind himself by a simple agreement to accept a smaller sum in lieu of an ascertained debt of larger amount, such an agreement being nudum pactum. But if there is any benefit or even any legal possibility of benefit to the creditor thrown in, that additional weight will turn the scale and render consideration sufficient to support the agreement.

Conditions
precedent.

It is most necessary, too, before advising issuing of a writ, except perhaps for the purpose of bringing about a speedy settlement, that, as is so times pleaded in statements of claim, all conditions should have been performed and fulfilled, and all things should have happened, and all times elapsed necessary to entitle the plaintiff to have the relief he asks for. As an instance of a condition precedent to an action being maintainable, see *Babbage v. Cabbourn*, 4 Q. B. D. 236. Many of the public Acts

Notice.

require notice of action to be given before an action or suit can be commenced, and within a fixed time from the cause of action having arisen; Acts like the Employer's Liability Act, 1880: *Moyle v. Jenkins*, 8 Q. B. D. 116; and for want of defects in a notice will not render it invalid, *Stone v. Hyde*, 9 Q. B. D. 76; *Clarkson v. Musgrave*, 9 Q. B. D. 386. And there are many others which

Time.

although not compelling such notice, make the time within which it can be brought shorter than usual, e.g., the statute 9 & 10 Vict. c. 93, s. 3, which enacts that an action for causing death wrongfully must be brought within twelve months after such death. Also Weights and Measures Act, 1878, s. 61, Public Health Act, 1875, s. 264, and *Flower v. London Board of Localities*, 5 Ch. D. 347.

In a word, whenever it is proposed to bring an action against any one acting under the authority of any Act of Parliament, such Act should be looked into first to see whether any and if so what notice is required, and if any limits are therein fixed.

But there are many other cases, not under any statute, where a demand should be made before the issuing of a writ. This necessity often arises from the very words of the contract sought to be enforced, e.g., the common clause in a fire insurance policy to refer to arbitration before bringing an action for the damage caused by fire. In trover and detinue especially should this care be taken, for in trover, where the defendant has originally got possession of the property sought to be recovered in no unlawful manner, it will be necessary to have evidence at the trial of the action that he refused to deliver it up; as this will show conversion on his part. In detinue, proof of a demand and a refusal thereof is often perhaps the best evidence of the detention alleged. The instances before given are only intended as examples taken almost at random, which speak for themselves; but in a large proportion of cases the plaintiff may by letters judiciously written, or by something judiciously done, put himself in a more favourable light with the Court, at starting, than his adversary. The writing of such letters or the doing of such things may well be advised in the opinion on case.

Demand
before
issuing
writ.
Compul-
sory refer-
ence to
arbitra-
tion.
Trover.

Detinue.

Horse
case.

As a further instance: If A. buys a horse from B., which is warranted by him to be sound, for £50, and it turns out to be unsound, and A., as is frequently done in the country, returns the horse, and B. lets it remain in his stable, and then A. sues B. for the £50,

they will both have done what they ought not. A. should have given B. notice, and then have sold the horse and sued B. for the difference between the £50 and expenses of keep and sale and what the horse sold for, and B. should not have let A. bring the horse back, or if he could not prevent it and meant to plead that the horse was sound, should have put it at livery and have given notice to A. of this, and that it would be sold in due course, and that he would hold him (A.) answerable for expenses and loss.

Plaintiff's
evidence
should be
looked at
before
bringing
action.

Again, before bringing an action the evidence that can be adduced in favour of the plaintiff must be carefully considered. For example, it would be no use for a person to make a claim against the estate of a dead man unless the claim was sustained by something more than the depositions of the claimant. Unless there is some corroboration of it, or something to satisfy the Court that the claim is literally true, it can take no notice of it or give any relief upon it: In re *Whittaker*, *Whittaker v. Whittaker*, 21 Ch. D. 663. Also in the case of a principal it should clearly be seen that he is liable for the act done by his agent or the servant of his agent if an attempt is being made to fix him with the liability. Upon the latter part of the subject see *Percival v. Hughes*, 9 Q. B. D. 441.

Action
against a
principal.

Capacity
in which
defendant
is liable.

Again, defendants may be liable in one capacity if not in another. As, for example, if not as surveyors of the highway for negligence in not keeping an iron flap of a water meter in a proper state, they are in their capacity as the authority for watering the streets, for they had placed the flap there in that capacity: *Blackmore v. Vestry of Mile End Old Town*, 9 Q. B. D. 451.

The maxim, he who seeks equity must do equity, is now of much more general application than formerly, owing to the growing feeling among the judges that each case should be decided upon its own merits, and also from the effect the Judicature Acts have had in bringing equitable principles into relief almost at the expense of legal ones; as well as from the appointment of so many equity counsel as judges on the common law side. Enough consideration is not generally paid, indeed too much cannot be paid to section 24, s.-s. 4, of the Judicature Act of 1873: "The said Court respectively, and every judge thereof, shall recognise and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter in the same manner in which the Court of Chancery would have recognised and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act." See O. 20, r. 6.

Equitable
jurisdic-
tion of all
Courts.

Williams v. Snowden, W. N. 1880, p. 124, is a good instance of what this sub-section means. Lord Coleridge said in that case, which was one of ejectment, "This is an equitable right, a right to have specific performance of an agreement 'appearing incidentally in the course of the cause.' How can the creditor, in the face of that enactment, refuse to recognise it." It was argued that the right must be claimed according to the forms of procedure given by the Judicature Acts, and that otherwise the plaintiff is placed at a disadvantage in not knowing what he has to meet. It was decided, however, that effect must be given to the equitable right, appearing as it did in the course of the cause.

Williams v.
Snowden.

Testing a
case.

The writer remembers a conveyancer of eminence who used invariably, in going through an abstract of title, to test each deed with a list of twenty-six tests, which commenced as follows:—"Examination of originals, stamps, executions and attestations, do. in case of powers, receipts—endorsement of, registration—dates of." It may have been a tedious plan, but it certainly was a safe one, and it is suggested that in advising an action the case should be tested as follows:—What is desired to be got? From whom? Can he give it? What will he say to the request? May he not set up some equitable defence? if so, what? Is this the time to issue writ? Has the plaintiff put himself in the best position he can by letters and offers of settlement? Does not anything remain for the plaintiff to do? What evidence will he use at the trial? In other words, the case must be looked at from all points, and the metaphor of the star, referred to before, must be ever kept in remembrance.

Advising
action.

No more difficult and responsible duty than advising an action, speaking generally, falls to the lot of counsel. He has to deal with his own ultimate client, probably in a state of irritation, with his mind scarcely able to judge in an unbiassed way of his own case; perhaps, besides this, he may be poor.

The opponent is at arm's length, and perhaps cannot be approached. He may be a very rich man. His own solicitor wishes an action advised, or perhaps dislikes the idea of such a thing in his office. Even in such a case a suggestion made with tact—and this is what above all things is required—may avoid an action, by which two persons, and perhaps their families, will be made unsettled for six months or

so, and where one firm of solicitors—the losers—will probably lose a client.

Nothing irritates a man more than to lose an action; no letting him down lightly as to costs consoles him. Frequently, though a man win, he objects to pay, from sheer ignorance, the difference between costs between solicitor and client and party and party, which latter only, of course, he will have received. It is not the best class of man generally who is litigious; and litigation is not the training to make a man generous, or even reasonable. Therefore, an action should not be advised except as a last resource. Then calmly and lucidly the position of the client, the legal aspect of his wrong and what is taken to be his remedy, should be explained to his solicitor.

It appears tolerably clear from *English v. Tottie*, 1 Q. B. D. 141, *Burton v. White*, 1 Q. B. D. 427, *Jenkins v. Bushby*, 2 Eq. 547, and *Smith v. Daniell*, 18 Eq. 649, that if privilege is pleaded, inspection cannot be had of the opinion given by counsel in reference to a case—the reason being that he is the agent of the solicitor employed with a view to litigation. *Jenkins v. Bushby* went so far as to decide that a case for the opinion of counsel, stated in reference to a separate litigation about the same subject-matter as the dispute in question, and after it had arisen, was privileged from production. Much the same principle is referred to by Quain, J., who, at p. 301 of L. R. 9 Ex., is reported to have said:—“Confidential communications are not necessarily privileged, but if they are made, not only as confidential communications, but with the view to

Privilege
of counsel's
opinion.

Confiden-
tial com-
munica-
tions.

or in the contemplation of a litigation, they privileged."

Opinion
not given
in contem-
plation of
litigation.

Doctor's
report.

It was also the opinion of Blackburn, J., as pressed in the same case (*Malden v. Great North Ry. Co.*), that a confidential communication made after litigation commenced was *prima facie* privileged. And if this is so of confidential communications generally (in the case last referred to was the report of some doctors sent to examine claimant against a railway company for injury sustained in an accident), still more is it true of opinion of counsel given with reference to proposed litigation; for if not given in contemplation of litigation it is perhaps not privileged, if *Fennell v. London and South Eastern Ry. Co.*, L. R. 7 Q. B. 767, rightly decides that documents of this nature are not privileged, unless in the nature of instructions for a brief, or notes for a case to be laid before counsel. But in a later case, *Friend v. London and Chatham and Dover Ry. Co.*, 2 Ex. D. 437, the report of a doctor, procured by a solicitor, as to the injury of a plaintiff in a railway accident was held to be privileged. Whether the opinion of counsel given when no litigation was as yet contemplated is protected is very doubtful. The reader is referred to the decision of the late Master of the Rolls in *Wheeler v. Le Marchant*, 19 Ch. D. 680, and also to the case of *Lentner v. Merfield* (C. A.), May 6, 1891, upon privilege generally, and to the chapter on Discovery.

Intended
actions

All that has been said before has had special reference to an opinion as to an intended action, of course this is only one small part of the opin-

which counsel have to give. Difficult as it is to give any directions which may be generally useful in the former case, it is almost impossible in this. Still, the following observations are hazarded as being the result of the writer's own experience; and, as having been heretofore considered of too elementary a character to appear in print, some at least of them may have escaped observation.

When an opinion is demanded of counsel in a non-litigious matter, the reason often is because the ultimate client will not take the advice of his solicitor, but desires to have it strengthened by the advice of counsel. In such a case it is more than probable that he will ask to see it himself. It should therefore be written in a style that a layman will understand, and legal terms as far as possible avoided. In such a case the first thing for the counsel to do is to find out from the papers sent what his client wants to know, and the second what he ought to have wanted to know, whether he has asked it or not; for often by the request, "and to advise generally upon the case," the client thinks that everything needful is asked for.

Opinion in
a non-
litigious
matter.

Object
being to
show it to
client.

Having found out the questions that have to be answered, the next thing is to discover the answers to them. The simplest plan is to go to the best and latest text-book upon the subject and see what is said there; then to look up the cases referred to in that or any other text-book on the subject, and see whether the circumstances of any one of them are not similar to the case put. It is not intended by this suggestion that the exercise of abstract thought should be dispensed with. No amount of diligence and ingenuity will make up for a lack of reasoning

Method.

Noting up
law re-
ports.

Head-
notes in
law re-
ports

Mistakes
in law
reports.

power; but unfortunately the result of such exercise must always be checked by cases and statutes which are the only valid authorities by which it will have ultimately to be tested. If the law reports are kept properly noted up a case cannot easily be missed when once the right scent has been got upon and the reasons why mistakes are made are general because the facts of the case upon which counsel is asked to advise are improperly or insufficiently put before him; or because he accepts the decision in the reported case as governing the case before him, while it was really given upon a set of facts not on all fours with those in his case. Some cases in the books are so scantily reported, that it is impossible to say what were the grounds upon which the judges came to the conclusion that they certainly did come to, and the head-notes, which never should be depended upon by others are plainly insufficient or wrong. Far oftener, however, some little circumstance in the report of the case accepted as ruling the point, not sufficiently perhaps noticed there, is overlooked. In the case of *Marshall v. Berridge*, 19 Ch. D. 248, Baggallay, L.J., conclusively shows that Mr. Justice Fry decided the case of *Jaques v. Millar*, in 6 Ch. D. 153, upon the ground that if a memorandum of agreement bore a date, the term agreed to be created thereby was to commence from the date of the agreement, through being under the impression that in *Blore v. Sutton*, 3 Mer. 237—246, the memorandum there contained no date. He says: "I should myself have come to the conclusion, on reading the report of *Blore v. Sutton*, that the date did appear on the memorandum;" and on examining the bill it appears that such was the case. Compare Jesse M.R.'s judgment, p. 239. Here, then, we have an

instance of a bad report, which misled even so eminent a judge as Mr. Justice Fry, and being acted on by him was the authority which governed the subject from June, 1877, until November, 1881. Propositions are often stated far too shortly and far too broadly in head-notes. Baggallay, L.J., says in *Union Bank of London v. Manby*, 13 Ch. D. 241, "I certainly cannot accede to the general proposition stated in the head-note to *Hancock v. Guerin*."

Mistakes no doubt arise, as for example, the one pointed out by Jessel, M.R., in *re Madras Irrigation and Canal Co.*, 16 Ch. D. 702. He says there: "The case cited is an instance of a mistake on the part of counsel, transmitted to the judge and adopted by the reports." See also 19 Ch. D. 334, and 21 Ch. D. 644, where the late Master of the Rolls said of the observations attributed to Lord Selborne in *Pike v. Dickinson*, that he did not understand them, and that they probably are incorrectly reported. But these are not of sufficient importance or number to be dangerous pitfalls to the ordinarily wary lawyer.

To rely upon the Digests for the effect of cases cited in them is too palpably dangerous to need comment; but it may be remarked that very often the Law Reports Digest is relied upon to give all cases which have been overruled. Unfortunately, unless from the head-note of a case it appears that it has been overruled or dissented from, although this may be apparent from the case itself, no notice of it is sometimes taken in the Digest. *Cooper v. Macdonald*, 7 Ch. D. 288, illustrates this. It practically overrules *More v. Webster*, L. R. 3 Eq. 267;

yet under the heading *Curtesy*, in the Digest, the latter is quoted as being still good law, and no mention of its having been disapproved of is made.

Two cases
should be
cited.

Digests must not be relied on in advising on case, and even reports of cases must not always be taken to contain all that fell from the learned judge during the hearing of the case. See the remarks of the late Master of the Rolls, 1 Ch. D. 47. It is for this reason that it is often well to cite two cases or more as authorities for any proposition not thoroughly well known, as it is improbable that in the reports of both cases the same thing should have been omitted.

Style of
cases to be
quoted.

In advising on case if the counsel confines his opinion to a consideration of those cases which are exactly in point with his own, it is quite possible that the opinion may be a meagre one notwithstanding all his researches. But if he argues from the result of similar cases or cases which are only partially in point as to the result of his own case, he should carefully explain for how much of what he says there is authority, and for how much his client has only the authority of his own opinion. There are many points even now which are not yet definitely settled, though apparently similar ones are well settled. A case like *In re Machu*, 21 Ch. D. 842, well shows the danger of drawing inferences from the one class of case as to the result of the other. The example there was the following. If an estate in fee simple is given by a will or other instrument which is in law a condition subsequent defeating the estate on alienation or on bankruptcy the condition is void. But there may be a limita-

What is
authority.

Example
of point
not yet
settled.

tion to a man, not of his own property, but of the property of another until he shall attempt to alienate or become bankrupt. This limitation is good as to a life estate, but there is no authority that a limitation in fee to a man until he shall alienate or become bankrupt is good. And this point was not determined in *re Machu*, and must therefore be one of much nicety. It would therefore be a great mistake to assume that because the limitation above alluded to was true of a life estate, it was also true necessarily of an estate in fee.

Whether the Statute of Limitations has or has not affected the question in dispute should always be considered when advising on case. Thus in *Gibbs v. Guild*, 9 Q. B. D. 59, it was decided by the majority of the Court of Appeal that in an action to recover by way of damages money lost by the fraudulent representations of the defendant, a reply to a defence of the Statute of Limitations that the plaintiff could not discover the fraud within six years before action, and that the existence of such fraud was fraudulently concealed by the defendant until within such six years, was good.

Statute of
Limita-
tions.

CHAPTER III.

PARTIES.

WHEN endorsing a writ the first thing to be considered is who are to be made parties to the action, and with reference to this Order 16 created the late practice, which is but little modified by the new Rules; so that much time need not be given to looking into them to learn the present system, the chief change being as to partners and infants.

<p>Plaintiffs.</p> <p>Old practice.</p> <p>Common law.</p> <p>Chancery.</p> <p>Amendment.</p>	<p>All persons may now be made plaintiffs who claim any relief jointly, severally or in the alternative; and no action will be defeated by reason of the misjoinder or nonjoinder of parties (Order 16, r. 11). A new plaintiff may be added upon the statement of the solicitor for the existing plaintiff that he consents: <i>Cox v. James</i>, 19 Ch. D. 55; or one plaintiff may be substituted for another (rule 2), and amendments made at any stage so that the Court may effectually settle all questions involved in the action before the Judicature Acts. At common law all the plaintiffs had to be jointly entitled and all the defendants jointly liable; and in Chancery all persons interested in the subject of the suit were necessary parties to it; but now when an action has been brought by the wrong person through a mistake of law (<i>Ducket v. Gover</i>, 6 Ch. D. 82) or fact (rule 2) amendment is allowed by the Court upon such terms as may seem just. And an action should</p>
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not now be dismissed for want of parties, for parties can be added at any time before final judgment: Jessel, M.R., *Hurst v. Hurst*, 21 Ch. D. 289. ^{Want of parties now curable.}

Though applications as to amendments by adding, striking out or substituting plaintiffs may be made by summons motion or summarily at the trial, the usual way is by summons: *Wilson v. Church*, 9 Ch. D. 552; and the application must not be made ex parte: *Tildesley v. Harper*, 3 Ch. D. 277. ^{By summons.} Where the names of parties who ought not to have been made co-plaintiffs are struck out at the trial they may, if necessary, be made defendants; and if the objection has been taken, their costs may be disallowed from such time as the objection was taken: *Roberts v. Evans*, 7 Ch. D. 830, Fry, J. ^{Wrong plaintiffs. Costs.}

Fresh parties cannot be introduced after final judgment. If it becomes necessary to enforce a judgment against persons who have acquired a title after the date of the judgment, an action must be brought for that purpose: *Att.-Gen. v. Corporation of Birmingham*, 15 Ch. D. 425. See also *Att.-Gen. v. Birmingham Tame and Rea Drainage Board*, 17 Ch. D. 685. In order therefore that notice may be given to persons against whom an order may be made personally, the action is sometimes made to stand over for a fortnight: In re *Rees*, *Rees v. George*, 15 Ch. D. 490; or the drawing up of the judgment is ordered to be suspended for fourteen days: *Lovesy v. Smith*, 15 Ch. D. 665. This is so even in the case of a further consideration where persons had already been served with notice of the decree, but had not obtained an order to attend the proceedings. See In re *Rees*, *Rees v. George*. ^{After judgment. Notice. Further consideration.}

Effect of
O. 16 & 17.

The effect of the Judicature Act upon the joinder of parties and of causes of action which must be looked at together, is summarised by Mr. Wilson in his edition of the Judicature Acts in the following way, which is quoted with approval by Denman, in *Smith v. Richardson*, 4 C. P. D. 112 :—" Order dealing with parties assumes an ascertained subject matter. Order 17 dealing with subject matter assumes ascertained parties. There must therefore either be identity of subject matter, in which case Order 16 gives ample liberty in the choice of parties or identity of parties, in which case Order 17 gives like liberty in the choice of subject matter." Ed. i p. 244.

Defendant
must not
be em-
barrassed.

The relations of bailor and bailee, principal and agent, consignor and consignee, trustee and cestui que trust, mortgagor and mortgagee, afford instances in which it may be difficult to say by whom an action should be brought; and in such cases a genuine mistake may be made: *Clowes v. Harliard*, 4 Ch. D. 413; but a defendant must not be embarrassed by the joinder of plaintiffs. Though a claim is embarrassing in which the vendor sues for goods and the indorsees of a bill given by the purchaser to the vendor for the goods jointly sue the purchaser to recover their price and also sue him upon the dishonoured bill; and it should be struck out: *Smith v. Richardson*, 4 C. P. D. 117.

Alternative
relief.

From this case it would appear that inconsistent alternative relief must not be sought when there are two plaintiffs. But not only can two plaintiffs claim alternative relief which is not inconsistent from a defendant, but one plaintiff can join two separate

alternative causes of action: *Bagot v. Easton*, 7 Ch. D. 1. The only requirement is that they shall not be inconsistent, and that the inconvenience and expense caused the defendant from having to meet a double case at the trial shall not be excessive. In such a case, however, the defendant may apply to have one issue tried before the other under the old Order 17, r. 1. See now O. 18, r. 8.

But a defendant, though unsuccessful, will be entitled to his costs occasioned by joining persons not entitled to relief unless the Court otherwise orders; and a defendant may be added, struck out or substituted in the same way as a plaintiff; the principle with regard to defendants being that no person can be made a defendant against whom no relief is asked. Where a defendant is added the plaintiff must file an amended copy and take out a writ of summons and serve it under rule 15.

A defendant wrongly joined will be struck out on his own application, though he has delivered a statement of defence, and although he has not applied at the first possible moment: *Valande v. Birmingham Land Corporation*, 2 Ch. D. 369. O. 6, r. 11, now applies.

When defendants are joined in the alternative the plaintiff, if successful against one, may have to pay the costs of the other: *Child v. Stenning*, 5 Ch. D. 695; and as to the mode of trial where there are two defendants, *Child v. Stenning*, 2 Ch. D. 413. Rule 14 said expressly: "Any application to add or strike out or substitute a plaintiff or a defendant may be made at any time before trial by motion or summons or at the trial of the action in a summary

Not for
security for
costs.
For disco-
very.

Heatley v.
Newton.

Defendant
cannot
demur for
want of
parties.

Examples
of who
should not
be made
parties.

Represen-
tative
action.

manner;" so that care should be taken that only the proper persons are made parties in the first instance, and especially that they are not added merely to have their security for costs: *De Hart v. Stevenson*, 1 Q. B. D. 313; though they may be made defendants for the purposes of discovery. This was decided in *Orr v. Diaper*, 4 Ch. D. 92. But they may be entitled to their costs; and it seems to be the opinion of Baggallay and Lush, L.JJ., in *Heatley v. Newton*, 19 Ch. D. 336, 337, that defendants cannot be retained as parties to a suit to get discovery from them. It is for this reason (i.e., that any person being a party to an action who objects because of want of parties can take out a summons asking that certain persons may be added as necessary parties: see Jessel, M.R.'s, words in *Werderman v. Société Générale d'Electricité*, 19 Ch. D. 246) that a defendant cannot demur for want of parties. Perhaps it may be said that all persons who have a right to sue a defendant for the same thing should be made parties either as co-plaintiffs, defendants, or by serving them with notice of judgment. Thus, where a plaintiff has only an equitable right, the person having the legal right to the thing claimed should be joined; as, for example, a trustee. Where an agent has no interest in the contract he should not be made a party, nor a landlord unless the suit is to establish a general right.

Where there are numerous parties in the same interest, a representative action may be brought, and one or more may sue or be sued for the benefit of all: *Fraser v. Cooper*, 1882 W. N. 65. Where an order is made binding the interests of individuals

represented by certain persons on the record, the Court may allow an appeal of one of them if the person on the record will not appeal; but where a plaintiff sues in a really representative suit on behalf of himself and all others who have the same interest as himself (i.e., of those who have not taken any steps to assert their rights adversely to the plaintiff), if any of these object to an order obtained by the plaintiff they must not appeal (for the order has been obtained by them as much as by the plaintiff), but they should take steps to prevent the plaintiff having the conduct of the cause, or get themselves struck out from being plaintiffs and made defendants: *Watson v. Cave*, 17 Ch. D. 22. See O. 16, r. 9.

Where any party objects to plaintiff's conduct.

And where a plaintiff suing on behalf of himself and all the bondholders of a company except the defendant did not obtain an order under rule 9 that B. should be sued as representing all bondholders who dissented from the plaintiff's claim, another bondholder can get made a defendant upon stating that neither the plaintiff nor the defendant B. represented his views and those of other bondholders: *Fraser v. Cooper Hall & Co.*, 21 Ch. D. 718.

Where an interest not represented.

With reference to trustees, executors, and administrators, there is a special provision in rule 8 that they may sue and be sued without joining the beneficiaries, subject to the power given to the Court to add a substitute when necessary. This applies to partition and redemption actions: *Simpson v. Denny*, 10 Ch. D. 28; *Mills v. Jennings*, 13 Ch. D. 639; *In re Cooper*, 1882 W. N. 55.

Trustees, &c.

A receiver should not as a rule be made a defendant. Receivers.

dant, even where a company is in liquidation and the landlord of the company's premises is applying for leave to distrain, unless a case of personal misconduct is made out against him. If he is his costs will have to be paid: *General Share and Trust Company v. Wetley Brick and Pottery Company*, 20 Ch. D. 267.

Vestry-men.

In the case of an action by the Attorney-General to restrain an improper expenditure of rates, individual members of the vestry, if made defendants, may probably put in a demurrer: Lindley, L.J., in *The Att.-Gen. v. Vestry of Bermondsey*, Sol. Journ., Feb. 24, 1883.

Married women.

Rule 8 has been the authority as to how married women and infants are to be made parties, and Daniell's *Chancery Practice*, 4th ed., p. 175 *et seq.* explains it, while *Roberts v. Evans*, 7 Ch. D. 830, illustrates the practice under it, and *Kingsman v. Kingsman*, 6 Q. B. D. 122, shows that it applied when the married woman was suing as trustee. It may perhaps be put shortly, that a married woman could not be sued alone for a debt at all except by leave in respect of her separate estate. The only liability she was under was to have her separate estate taken from her for the benefit of any person with whom she might have contracted on the faith of it. Therefore, in actions by or against a wife, when the question of being a trader in the City of London did not arise, except by special leave the husband must have been joined, when the cause of action would survive to or against the wife; and excepting when suing under the Married Women's Property Act, 1870, or after judicial separation under 20 & 21 Vict. c. 85,

Married women before Married Women's Property Act, 1882.

When husband need not have been made a party.

ss. 21, 25, and 26, she should have sued in respect of her separate estate by her next friend, and even then her husband should have been made a defendant in a suit. A married woman could not have been made a bankrupt: *Ex parte Jones*, In re *Grissell*, 12 Ch. D. 484. This case well shows the position of a married woman before the Married Women's Property Act, 1882, and that though she had separate estate, proceedings could not be taken against her personally to enforce payment of a debt. Could not
be bank-
rupt.

In the case of a married woman suing for her separate estate, she was obliged to sue by her next friend, and her husband to be made a co-defendant. It would appear from *Martano v. Mann*, 1880 W. N. 80, that the Court did use the discretion given it under rule 8, and would in a proper case allow a married woman to sue alone, with or without giving security, and would make the next friend give security at any stage of a case if it thought right. From *Noel v. Noel*, 13 Ch. D. 511, and especially from the judgment of Jessel, M.R. therein, it appears that under rule 8, a woman must have obtained a special order to defend separately from her husband and not an order by petition of course. This case is also an authority to show that when a woman has ample means of her own she should not be required to give security for costs. Here she had £1500 a year under a separation deed. In fact, the rule as to giving security for costs before a married woman could be allowed to sue separately was the same as in the ordinary one of giving security by an appellant (*Harlock v. Ashberry*, 19 Ch. D. 84), and therefore she was obliged and probably must still give security if she appears to have no available When wife
need not
give secu-
rity.

means to pay the costs if she loses, but not otherwise:
Brown v. North, 9 Q. B. D. 52.

The present position of married women as parties to an action must, owing to the Married Women's Property Act, 1882, which abolished the old legal doctrine that a husband and wife are one person (In re *March*, *Mander v. Harris*, W. N. 1883, 116), be treated of at somewhat greater length than that of other parties.

Summary
of law as
to wives
before Act
1882.

Wife not
presumed
in contract
to have
bound
separate
property.
Example.

After
wife's
death.

To summarize the law as it stood before that Act. Although a married woman could not contract personally (*Attwood v. Chichester*, 3 Q. B. D. 722), she was not even presumed, until the contrary was shown (see *London Chartered Bank v. Lempriere*, L. R. 4 P. C. 572), to have had the intention, by entering into a contract with reference to it, to bind her separate property. Thus, if she had a power to dispose by deed or will of separate property, and in default it went to a stranger, the Court during her lifetime would only deal with the limited interest. And in *Paul v. Paul*, 20 Ch. D. 742, the wife's property was settled after life estates in the husband and wife in default of children on her if she survived; and if her husband survived, as she should by will appoint, and in default on her next of kin excluding the husband. By a separation deed half the income of the trust funds was settled on the wife to her separate use. It was held that the trust in favour of the next of kin could not be revoked, and that although there was no possibility of issue, the husband and wife together were not entitled to the corpus. But after her death, even if she had exercised the power, her separate property was held

liable for her engagements: *Skinner v. Todd*, 1881 W. N. 166, approving *Mayd v. Field*, 3 Ch. D. 587; see also *Hodges v. Hodges*, 20 Ch. D. 749. When, however, there is a restraint on anticipation the interest of the property alone could be dealt with by her and that only when due, and the corpus at the time of the contract is not liable for her debts: *Pike v. Fitzgibbon*, 17 Ch. D. 454, except by her consent and that of the Court: Conveyancing Act, 1881, s. 39; *Tamplin v. Miller*, 1882 W. N. 44. An apportioned part of interest cannot be assigned: *Jolland v. Burdett*, 10 Jur. N. S. 349. Appor-
tioned part
of interest.

The contracting power of married women under the Divorce Acts in cases of judicial separation is that of *femes soles*, but that under the Married Women's Property Act, 1870 was very imperfect. For example, section 3 as to property in the funds and notice before marriage that it is separate estate did not apply to trust property, and unless they had applied under sections 2, 3, 4, 5 they could not transfer investments without the concurrence of their husbands: *Howard v. Bank of England*, L. R. 19 Eq. 295. The husband had to be joined to charge what had been declared to be separate property under the Act of 1870: *Hancock v. Lablache*, 3 C. P. D. 197; and was allowed his costs when thus brought before the Court: *Kevan v. Crawford*, 6 Ch. D. 29. Husband's
costs. No personal judgment could be enforced against them, nor judgment signed under Order 14, r. 1: *Durrant v. Ricketts*, 8 Q. B. D. 177. An enquiry, as in *Pike v. Fitzgibbon*, 17 Ch. D. 454, used to be ordered.

Under the Act of 1882 a married woman can in effect contract so far as her separate estate will go Married
Women's
Property

Act, 1882, as a feme sole ; and section 3 makes the presumption in case of such a contract in favour of her husband intended to have charged it. Questions may arise under it as to contracts by a married woman possessed of separate estate in respect of necessities and things for the common use of herself and husband ; but the gist of it seems to be that contracts, including liabilities for breach of trust not for torts, will be enforced to the extent of separate property she has free from restraint of anticipation at the time of judgment or execution. And she can, whether she has separate property or not in her own name, sue or get the assistance of the Court just as a feme sole without a next friend without leave of the Court and without giving security for costs, and her husband is not to be joined unless something besides costs is claimed from him, as otherwise his costs will have to be paid ; but if he has been joined the wife will have to get an order to defend separately. It would seem that now judgment can be enforced and orders of the Court made against women just as against men ; and a woman can now be made bankrupt if a trader carrying on business separate from her husband.

Torts. With respect to torts, a woman could at common law only sue for torts in conjunction with her husband, and he got the damages. By the Act 1870. of 1870 she could sue in respect of torts to her separate property, but now she can sue alone in respect of any tort, and the damages are her separate property. She cannot, however, sue her husband in a personal tort (section 12); but it seems that she can for the protection of her separate property.

Torts by a wife. In respect of torts by a wife, at common law

husband was liable for them, but now it would seem that a married woman is liable for any tort committed by her to the extent of her separate property, and any damages or costs recovered against her she has to pay out of her separate property.

The plaintiff, however, has still the option of joining the husband, and this will probably be done and judgment taken both against him and against the wife's separate property. A married woman may therefore now be considered liable to the extent of her separate property for fraud, breach of trust, or any tort, and she can also be sued as an executrix.

The Statute of Limitations did not run in favour of separate property: *Hodgson v. Williamson*, 15 Ch. D. 87; but it seems probable, especially if a married woman will be considered under the new Act to have the legal estate, that it now will.

Another alteration effected by the Act would seem to be that while before the Act a married woman could only charge such part of her separate property as was unincumbered at the time of the charge (*Punchard v. Tomkins*, Solrs. Journal, p. 56, Nov. 25, 1882), she can now deal with it like a feme sole. For example, if a married woman executes two charges on her separate property in a register county and the first is unregistered, the second may now have priority, which it did not have before.

If a woman who is a plaintiff in an action marries during its continuance, it may probably be carried on now without making her husband a defendant, and certainly without her having a next friend

appointed, as used to be necessary: *Darcy v. Whitaker*, 24 W. R. 244.

Husband's liability for debts after wife's death. After the death of a married woman, her husband is not liable for her debts before marriage, whether she had or had not property at the time of her marriage: *Bell v. Stocker*, 10 Q. B. D. 130.

When husbands wrongly joined. In a petition for the appointment of new trustees under a will by married women, their husbands if joined as parties should be struck out: In re *Outwin's Trusts*, Solrs. Journ., Feb. 24, 1883, p. 276.

Security for costs. And the rule as to giving security for costs is now the same in the case of married women as of other parties. She must do so if she has no available means to pay the costs if she loses, but not when she has such means: *semble Brown v. North*, 9 Q. B. D. 52; *Harlock v. Ashberry*, 19 Ch. D. 84.

See p. 49.

Infants. Rule 16 also provides that infants may sue and defend by guardians. Guardians are appointed either by the infant upon petition of course presented in the name of the infant, or if the infant or his friends fail to appoint a guardian, by the plaintiff upon motion, notice of which must be served as directed by Order 13, r. 1, and proper evidence must be adduced in support of the motion.

Where infant does not appoint guardian.

Who can be appointed. A person who should not be a volunteer if he has no adverse interest may be appointed although a defendant; but the plaintiff or a person out of the jurisdiction cannot be appointed. Whether a married woman may now be appointed would depend upon the special circumstances of the case. It would appear from *Woolf v. Pemberton*, 6 Ch. D. 19, that

Father's right.

the father, if he desires it, can cause himself to be substituted for the next friend that has been chosen by executors of a will under which infants are entitled to bring an administration suit in their behalf. See O. 55, rr. 3—12.

With regard to the issuing of a debtor's summons by an infant plaintiff, *Ex parte Brocklebank*, *In re Brocklebank*, 6 Ch. D. 358, decides that he can do so in his own name; but it may, perhaps, be gathered from this case that the debtor could, if he took the point, have an adult named as security for the costs of the summons, and that if he did not but let it proceed, an adjudication in bankruptcy could be made upon it. In *Lewis v. Nobbs*, 8 Ch. D. 591, the name of a defendant who was also the next friend of the plaintiffs, being in fact their step-father and the husband of another defendant (their mother), was struck out and liberty given to the wife to defend separately. Service of notice of judgment on an infant is effected by serving the father or guardian, or if there is none the person with whom he or she resides, unless the Court otherwise orders: Rule 12. Debtor's summons.
Service of judgment.

The late case of *In re Harwood*, 20 Ch. D. 536, *In re Harwood*, decides that where stock to which an infant was beneficially entitled had been invested in the joint names of himself and another person, the Court could make an order vesting in such other person the right to transfer. This was done under the Trustee Extension Act, 1852, s. 3, by V.-C. Hall.

As to default in pleading by an infant, see *National Provincial Bank v. Evans*, 51 L. J. Ch. 97, and O. 13, r. 1. Default in pleading by infant.

Bank-
rupts.

What
actions he
can carry
on.

What he
cannot.

Costs.

O. 17 now deals with the change of parties caused by marriage bankruptcy and death; and this may perhaps be a convenient place for glancing at some few late cases upon changes caused by these events, as an action does not become abated thereby if the cause of action continues in the case of bankrupts.

Actions to enforce claims not provable under the Bankruptcy Act, 1869 s. 31, may be carried on by a bankrupt: *Ex parte Baum*, *In re Edwards*, L. R. 9 Ch. 673; as, for instance, to recover damages in respect of a tort: *In re Meade*, *Ex parte Harold*, 3 Ch. D. 129. But with reference to all other actions, a bankrupt cannot continue an action as plaintiff: *Jackson v. N. E. Ry. Co.*, 5 Ch. D. 844; *Warder v. Saunders*, 10 Q. B. D. 117; but if a plaintiff becomes bankrupt and the defendant pleads his bankruptcy, and his trustee declines to continue the action, the plaintiff is entitled to his costs up to the time of such pleading: *Foster v. Gamgee*, 1 Q. B. D. 668. And when a plaintiff is adjudicated bankrupt after action brought and his trustee declines to continue the action, it may be stayed by an order in Chambers, and the defendant need not plead the bankruptcy in bar: *Warder v. Saunders*, 10 Q. B. D. 114. A notice of motion to dismiss for want of prosecution should be served on the trustee of a bankrupt plaintiff: *Wright v. Swindon Ry. Co.*, 4 Ch D. 164; but in *Eldridge v. Burgess*, 7 Ch. D. 411, it was decided that, if a case came on the plaintiff in which had lately put on his petition, and no one appeared for him or for his trustee, but there was no evidence at all that any notice of the action had been served upon the trustee, the action had abated. Of course a bankrupt can, before discharge, bring an action for work done by him after his bankruptcy if

his trustee does not interfere: *Jameson & Co. v. The Brick and Stone Co.*, 4 Q. B. D. 208; but the remuneration of an uncertificated bankrupt belongs to the trustee: *Emden v. Carte*, 19 Ch. D. 311. *Emden v. Carte.*

Where a defendant becomes bankrupt, the action may be restrained by the Bankruptcy Court; see, however, *See p. 251.*

Ex parte Harrison, *In re Kent*, 1883 W. N. 9; and as to restraining an action by a creditor when the debtor has very slightly mis-stated a debt in his statement: *Ex parte Engelhardt*, W. N. 1883, 109.

But upon his obtaining his discharge he may be sued, and such an action will not be restrained, for a debt incurred by fraud, although he will be liable to pay only the balance due after giving credit for any dividends paid during the bankruptcy: *Action when restrained and when not.*

Ex parte Hemming, *In re Chatterton*, 13 Ch. D. 163.

If it is not restrained, it appears from *Barter & Co. v. Dubeux & Co.*, 5 Q. B. D. 413, that although the trustee disputes the plaintiff's claim, and he can be brought before the Court if necessary by an order to continue the proceedings, yet that the Bankruptcy Court is the proper forum for the plaintiffs to prove their debt in. But if an action is instituted, for instance, in the nature of an action for fraud, which can be brought against a bankrupt and his trustees (although one for unliquidated damages, Bank. Act, 1869 s. 31, or for an account of profits, *Ex parte Baum*, L. R. 9 Ch. 673, perhaps cannot), and the bankrupt defendant does not appear at the hearing but his trustees appear and defend, they are liable to the costs of the action: *Watson v. Holliday*, 20 Ch. D. 780.

In *Chorlton v. Dickie*, 13 Ch. D. 160, *Chorlton v. Dickie.* it was held that a plaintiff need not file the pleadings, or notice of motion for judgment under Order 0.19, r. 10. 19, rule 6, or perhaps prove service of notice of

trial where a defendant having become bankrupt after service of notice of trial, and an order of revivor having been made against his trustee and served upon him, he did not enter an appearance, When notice was served upon him (the trustee) that the action was restored to the paper for trial, he did not appear. See, too, *Parsons v. Harris*, 6 Ch. D. 696.

When
service
should be
on trustee.

Where it appears from the statement of claim itself that the defendant is a bankrupt, he can demur: *Weise v. Wardle*, L. R. 19 Eq. 171; otherwise the bankruptcy may be pleaded; but a bankrupt may move to dismiss an action for want of prosecution: *Kembrill v. Walduck*, 18 Jur. 69. If the trustee is made a party, proceedings in the action should no longer be served on the bankrupt unless the action is a personal one, as in such a case he has no further interest in it or in the costs. Where, however, a personal order is made against a party who has become a bankrupt he may even appeal although his trustee refuses to join: *Deuce v. Mason*, 1879 W. N. 177.

Costs.

As to the costs of bankrupt trustees there are two late cases—*Lewis v. Trash*, 21 Ch. D. 862, North, J., and *Clare v. Clare*, 21 Ch. D. 865, V.-C. Hall.

Death.

Where an action has become defective by the death of a party or indeed in any other way, it is in the discretion of the Court whether it will allow it to be revived or not: *Curtis v. Sheffield*, 20 Ch. D.

Revivor.

398. On the death of a sole plaintiff in an administration action an order of course to revive can be made on the application of a person who had been served with notice of the administration judgment

and had obtained liberty to attend: *Burstall v. Fearon*, W. N. 1883, 99. An order of revivor for purposes of appeal will not be made unless the Court is of opinion that no person has altered his position or incurred any liability or suffered any loss on the faith of the order from which it is desired to appeal.

But on the death of a defendant who has delivered a counterclaim it is necessary that his representatives, Revivor. Counter-claim. if they wish to prosecute it against the plaintiff, should get an order of revivor. And an order of revivor obtained by the plaintiff against them does not authorise them to prosecute the counterclaim against him: *Andrew v. Aitken*, 21 Ch. D. 175.

In the case of the death of a plaintiff insolvent and intestate, the Court appointed a person against whom the defendant could move to dismiss the action for want of prosecution: *Wingrove v. Thompson*, 11 Ch. D. 419. In connection with the death of the plaintiff, the old common law maxim, *Actio personalis moritur cum persona*, will probably here recur to the mind of the reader. It is sometimes explained by the statement—an action *ex delicto* Actio personalis moritur cum persona. Death of plaintiff. cannot be maintained by the personal representative, but one for breach of contract can. Its real effect is given in the judgments of Field, J. (and Bramwell, L.J. on Appeal) in *Twycross v. Grant*, 4 C. P. D. pp. 43–46.

In that case a judgment of Lord Ellenborough was quoted containing words which seem to explain the maxim in the following words: “Executors and administrators are the representatives of the temporal property, that is, the debts and goods of the deceased; but not of their wrongs, except when those wrongs ope-

rate to the temporal injury of their personal estate.” *Twycross v. Grant* was an action to recover from promoters the price paid by the plaintiff for shares, on the ground that the prospectus omitted to disclose contracts which should have been set out therein; and in the course of the argument, Field, J., said to the counsel for the plaintiff, “If defendant had died and his estate had benefited by the fraud practised, would not the cause of action have survived to plaintiff’s representative?” The reply was that this could not be denied. And see *Astley v. Taylor*, 10 Ch. D. 768. So that the death of the defendant will make no difference, but the action will continue against his representative. By the 138th section of the Common Law Procedure Act, 1852, in the case of the death of a sole defendant or surviving defendant before verdict or judgment by default, when the action survives, the plaintiff might make a suggestion of the death of the defendant, and proceed, in the way prescribed by that enactment, to substitute his executor or administrator as a defendant; the object of which was to place the personal representatives in as good a position as to costs as the original defendant would have been in; and so the Court would not allow the plaintiff to discontinue his action without the payment of all the costs to the executor or administrator who had been so substituted: *Benge v. Swaine*, 15 C. B. 784. See for an action not maintainable, *Pulling v. G. E. Ry. Co.*, 9 Q. B. D. 110.

Common
Law Pro-
cedure
Act, 1852.

Instance
of action
not main-
tainable.

Death of
defendant.

And with reference to the death of a defendant in an action on tort. At common law executors cannot be sued for a wrong committed by their testator for which only unliquidated damages could be recovered.

The Act of 3 & 4 Will. IV. c. 42, allowed executors to be sued in certain cases, but with the limitation that the injury in respect of which the action is brought must have been committed not more than six months before the death of the testator. If the statute does not apply, as where an action is brought against a defendant who dies more than six months after the issue of the writ, or indeed after the commission of the acts complained of, the common law rule remains in force. In *Kirk v. Todd*, 21 Ch. D. 494, the plaintiff brought an action for damages and an injunction against the firm of T. & Co. for torts committed by the firm which consisted of T. alone, who died more than six months after the commencement of the action, which was continued against his executors. Although the executors were continuing the business in the name of the firm it was dismissed with costs. See *Chapman v. Day*, Sol. J., June 23, 1883, p. 566. *Kirk v. Todd.*

In the case of a petition, where the petitioner died after an order had been made directing inquiries, the petition was ordered to be continued and carried on by the petitioner's personal representatives: In re *Atkin's Estate*, 1 Ch. D. 82. This rule, however, does not apply to a charging order: *Finney v. Hinds*, 4 Q. B. D. 102. When an executor continues an action he is personally liable for costs: *Boynton v. Boynton*, 4 App. Ca. 733. Where petitioner died.
Charging order.
Executor.

When the defendant dies, it has been already noted that the test in an action of tort is whether his estate has benefited or not, and if it has, the action can go on, but if not, it ceases.

The executor of the defendant should be made

See **O. 17, r. 2.** defendant under the old Order 50, r. 2, where the action survives against him ; for proceedings under this rule has taken the place of the old practice in

Where
executor of
defendant
not made
defendant.

revivor; and if he is not, he should apply to the Court that the plaintiff may be ordered to go on with the suit against him within a limited time, or else that it may be dismissed as against him: *Motion v. King*, 29 W. R. 73. For another instance of devolution of interest under Order 50, r. 2, see *Waller v. Smith*, 46 L. T. 473.

Change of
parties
after judg-
ment.

For the effect of a change of parties after judgment, see **Order 42, r. 23.** An order for a change of parties under Order 50, r. 4, is generally an order of course: *Roffey v. Miller*, 1875 W. N. 225; but in special cases it seems that it may be applied for in court: *Haldane v. Eckford*, 1879 W. N. 80. The

Death of
plaintiff
and de-
fendant.

consequences of the death of both plaintiff and defendant are well explained in Williams on Executors, and do not need further notice here; but the very great powers of joining causes of action which the Judicature Act has given must next be considered.

Joinder of
causes of
action.

Before it came into force alternative and inconsistent relief could not have been claimed; but under it nothing but the question of convenience at the trial stands in the way. Lord Cairns in his judgment in *Bagot v. Easton*, 7 Ch. D. 8, says: "The Judicature Act has enlarged the liberty of the plaintiff in claiming relief, for it is expressly provided that, subject to certain regulations, alternative relief may be asked, and several causes of action may be joined in the same statement of claim."

Only ob-

The only objection that can be urged is that there

may be some inconvenience and expense to the defendant, because he may have to meet a double case at the trial. If the defendant can show to the Court that it will be more convenient to try one issue before the other, he can apply under Order 17, r. 1, and one issue can be entirely disposed of before the other is approached. *Howell v. West & Jones*, 90 W. N. 1879, illustrates this. There a father sued a schoolmaster for breach of contract in not taking care of his son as he had agreed to do, and along with him the doctor employed by him for not exercising reasonable skill in attending to the boy. The Court of Appeal allowed the claim to stand against them both, saying that there was no misjoinder. As to plaintiffs, *Booth v. Briscoe*, 2 Q. B. D. 496, decided that an action for libel might be brought by two or more persons jointly, although not in partnership or otherwise jointly interested. This case should be studied carefully, as it is quite a leading case upon the subject.

joinder
incon-
venience
at trial.

Now O. 18,
r. 8.

Action
against
school-
master and
doctor for
negligence
to school-
boy.

Booth v.
Briscoe.

A good case to show what causes of action can be joined is *Dessilla v. Schunck & Co. and Fels & Co.*, 1880 W. N. p. 96. There the Court (Lord Coleridge, C.J., Grove and Lopes, JJ.) said that as the libels were of the same class written in the same business and published in the same place to the same persons, the causes of action might be joined, and that the joinder was not embarrassing; although in cases where there were several defendants and perfectly distinct and different causes of action, it might be otherwise. A new and separate cause of action must not be introduced by the joinder of a new co-plaintiff: *Dalton v. Guardians of St. Mary Abbot's*, 47 L. T. 349.

Libels of
same class
to same
persons.

Order 18. **Order 18** the authority upon joinder of causes of action, says, in effect, that several causes of action may be united in the same statement of claim, unless they cannot be conveniently disposed of together ;

Rule 4. and especially (rule 4) claims by or against husband and wife may be joined with claims by or against

Rule 5. either of them separately ; also (rule 5) claims by or against an executor as such, may be joined with claims by or against him personally, provided the latter arise in respect of the estate about which he sues or is sued as executor ; and (rule 6) claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

Action for recovery of land (rule 2). O. 18. But without leave (rule 2) no cause of action is to be joined with an action for the recovery of land, except for mesne profits arrears of rent of it or damages for breach of contract under which it was held ; but by leave there may be joined with an action for the recovery of land an injunction to restrain the defendant from interfering with the possession of a house and furniture, or removing the same, and from continuing in the occupation thereof ; as well as a claim for damages for such removal, and for trespass, and also for an assault committed at the time of the trespass: *Dennis v. Crompton*, 1882 W. N. 121. See also *Kendrick v. Roberts*, 46 L. T. 59. But in *Compton v. Preston*, 21 Ch. D. 158, a counterclaim was excluded which joined other causes of action than those specified in Order 17, r. 2, with an action for the recovery of land.

What may be joined by leave.

Rule 2 applies to counter-claims.

Leave In a very special case leave will be given even

after the issue of the writ: *Musgrave v. Stevens*, 1880 W. N. 163. given even after issue of writ.

A simple foreclosure action is not an action for the recovery of land (*Heath v. Pugh*, 6 Q. B. D. 345; 7 App. Ca. 235) for the purposes of this rule, though in some respects it is an action for the recovery of land. If, however, in it a claim for possession is inserted (as otherwise a writ of possession will not be the appropriate remedy, as it would appear if this claim is inserted that it is, and that it can be joined to the other claims in a foreclosure action without leave: *Chitty, J.*, in *Wood v. Wheeler*, 22 Ch. D. 282) and joined to one for foreclosure, the claim is thereby made one for the recovery of land; and it is thought that it then does come under this rule. Foreclosure action. When action for recovery of land under this rule. By section 3. Section 3. 3 a trustee in bankruptcy cannot without leave combine his private claims with claims by him in that capacity.

It would seem from *Ex parte Brown*, *In re Yates*, 11 Ch. D. 148, that those cases alone in which the trustee takes only that which the bankrupt himself would have taken should be left to ordinary tribunals and not tried out in the Bankruptcy Court. What cases trustee in bankruptcy can try in High Court. Therefore it would seem to be a mistaken idea that except in such cases as these leave will be given; for example, it will not be given, it is thought, where there is a question of fraudulent preference, or one affecting an act of bankruptcy. Such claims as these should be pursued by the trustee in the Bankruptcy Court; and leave would not be given to him to combine them with claims by him in his private capacity in the High Court of Justice. Section 4 is simply an extension of section 40 of the Common Law Procedure Act, 1852, and the subject of section

Contracts
with exe-
cutors.

Macdonald
v. Caring-
ton.

Rule 5 does
not apply
to counter-
claims.

5 is explained by Hall, V.-C., in *Padwick v. Scott*, 2 Ch. D. 743. It is to provide for cases where the executor or administrator has been dealing with the assets or making contracts in the course of the administration properly and fairly in his character of executor or administrator, for then it becomes a question whether, the contracts being personally entered into by him, he should be sued in his character of legal personal representative, or in his personal character and be left afterwards to get payment if he can out of the assets in a course of administration. And Lindley, J., in *Macdonald v. Carington*, 4 C. P. D. 38, says that rule 5 is obviously inserted to prevent the difficulty where a plaintiff is suing on something which might give a cause of action in his executorial capacity, and does not apply to counterclaims.

Leave to
join, when
given.

So much for the Rules expressly giving the power of joining causes of action ; and with regard to those restricting it, it may be observed that the limitations in them are simply to not joining certain causes of action without leave. Such leave is liberally given, as, for instance, by Jessel, M.R. in *Cook v. Enchmarch*, 2 Ch. D. 111, to join with an action for the recovery of land a claim for—

- (1.) An injunction to restrain one of the defendants from receiving the rents and profits of the land ;
- (2.) A receiver of the rents and profits of the land ;

- (3.) The delivery up and cancellation of a deed, under which one defendant claimed to be entitled to the land.

Whether an action to establish title to land is an action for the recovery of land for the purposes of this rule, see *Gashill v. Hunter*, 14 Ch. D. 492, and *Whetstone v. Davis*, 1 Ch. D. 49.

The case of married women has been already touched upon, and that of infants needs no more to be said about it than that an infant sues by his next friend and defends by a guardian ad litem, whose proceedings he can wholly repudiate on arriving at full age; while a lunatic, so found by inquisition, sues and is sued through his committee. The sanction of the judges specially appointed, who decide after receiving a report from a master in lunacy that the proposed suit is in his opinion a proper one, must be obtained before instituting an action on behalf of a lunatic. See *Elmer's Practice*, 328. The late case of *In re Weaver*, 21 Ch. D. 615, raises a point with reference to lunatics which it did not decide and which has not been decided since. It is whether a person who supplies a lunatic with necessaries knowing him to be a lunatic can maintain an action against him on the ground of an implied contract. Neither Brett, L.J., nor Cotton, L.J., gave any opinion upon this. With regard to persons of unsound mind, they sue (under Order 18) by their next friend, and defend by means of a guardian ad litem. He who as next friend brings an action to protect the property of a person of unsound mind not so found by inquisition, does so at his own risk, and must be prepared to vindicate the necessity and propriety of his proceedings if they are called in

Infants.
See O. 18,
r. 18.

Lunatics.

Action for
necessaries
against.

Persons of
unsound
mind.

question, and to bear the consequences of any unnecessary and improper proceedings. He takes the risk of the lunatic repudiating his doings if he recovers his reason: *Beull v. Smith*, 9 Ch. D. 92.

Partners

Partners may now sue or be sued in the name of their firm (O. 16, r. 14), and a summons may be taken out by either party for a statement which may be verified on oath of the names of the partners in a firm. The order made upon such summonses is not an order for discovery so as to come under Order 31, r. 20: *Pike v. Queene*, 24 W. R. 322. But in *Ex parte Blain*, *In re Sawers*, 12 Ch. D. 522, it was pointed out that A. and B. might be the partners in a firm at the time of the issue of the writ in an action, and that afterwards the firm might have taken in new members. Therefore, in the head-note to that case the following quære appears: Whether in all cases it is competent to sue a firm under this rule? The latest case upon this point is *Ex parte Young*, *In re Young*, 19 Ch. D. 124, see *Davis v. Morris*, 10 Q. B. D. 436, where the learned judges of the Court of Appeal differed as to whether this rule applied to a partnership dissolved before the issue of the writ in respect of a cause of action which had arisen during its existence. It applies to a partnership existing at the time when the writ is issued. Though partners enter appearance in their own names individually, subsequent proceedings in the action go on in the name of the firm, and the judgment should be taken against the firm, and if an action is brought against partners in the firm's name, and an appearance is entered only by some of the partners, judgment

cannot be signed against those who have not entered an appearance: *Jackson v. Litchfield*, 8 Q. B. D. 476; see also *Munster v. Railton*, 10 Q. B. D. 475; and *Fore Street, &c. v. Durrant*, 10 Q. B. D. 471; O. 16, r. 14. As to execution against partners, see O. 42, r. 10. As to the case of paupers, see O. 16, r. 22, et seq.

The defence of a firm cannot be struck out for default in appearance of the firm as such, for ^{Default in appearance.} Order 12, r. 12, only authorises the partners to appear individually in their own names: *Fry, J., Taylor v. Collier & Son*, 30 W. R. 701; W. N. 1882, 83.

Where judgment is recovered against a partnership in its firm's name, the judgment creditor can ^{Action on judgment.} sue its members individually on the judgment, and is not confined to the remedy given by O. 42, r. 10: *Clark v. Cullen*, 9 Q. B. D. 355.

As to the compulsory disclosure of the names and residences of members of a firm, see Order 7, r. 2. When one person constitutes a firm, see O. 9, r. 7; and *O'Neil v. Clason*, 46 L. J. 291, as to service when he is out of the jurisdiction.

As to the administration and execution of trusts, see O. 16, rr. 33—48, which contain many valuable new provisions which sufficiently appear from the rules themselves.

CHAPTER IV.

THIRD PARTIES.

For the new practice, see O. 16, r. 49, et seq.

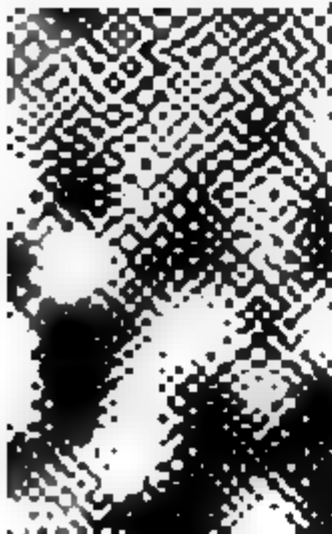
Order
16, rule 17.

Under Order 16, r. 17, when a defendant claimed a remedy over, or when from any cause it appeared to the Court that a question should be determined not only as between the plaintiff and defendant but as between the plaintiff defendant and any other person or between any or either of them ; it might on notice to such third person make such order as might be proper for having the question so determined, and might under rule 19 at any time order such person to be added as a party to the action.

When
third party
may be de-
fendant to
counter-
claim.

Why
brought
into action.

These rules were based on section 24 (sub-section 3) of the Judicature Act of 1873, but they did not go to the same length that it does, and their combined effect was that a third party might be made a defendant to a counterclaim, although only along with the original plaintiff ; or might be brought into the action so as only to be bound by the decision arrived at in it. He might in fact be said to be amenable to the exercise of the discretionary powers of the Court as to costs among other things. Though the spirit of this sub-section is that every person served with a third party notice shall thenceforth be deemed a party to the cause with the same rights in respect of his



defence as if he had been duly sued in the ordinary way, it will be found that the rules did not go quite so far. This way of bringing in third parties was in fact introduced by the Judicature Act, and the Court had only to be convinced that to settle the matter in dispute, third parties should be brought in, for it to make an order for this to be done (except in the case of adding a plaintiff against his will), either of its own accord or upon the application of the plaintiff or defendant.

Third party brought in to settle matter in dispute.

The effect of the rules under the Judicature Act as to the bringing in of third parties is in fact briefly this. The defendant may make the third party a defendant to a counterclaim along with the plaintiff; or when he claims to be entitled to contribution (as for instance in the case of a surety against a co-surety), indemnity (as an acceptor of an accommodation bill against the drawer on the ground that the bill was accepted for his accommodation), or other remedy or relief (as in an action on a contract for sale when the defendant says that he was the agent of the third party) over against any other person, he may make the decision between himself and the plaintiff binding on the third party by proceeding under the rules.

Effect of rules.

The procedure was as follows: An order is obtained by the defendant giving him leave to serve a notice on the third party in the form No. 1 Appendix B. to the Act of 1875. Notice of the application for the order should be given to the plaintiff, as he may object to a third party being brought into his action: *Wye Valley Ry. Co. v. Hawes*, 16 Ch. D. 489. If the party does not appear he is bound: *Horwell v.*

Procedure.

Non appearance of

third party after notice. *London General Omnibus Co.*, 2 Ch. 365; but if he does appear a further order must be obtained stating to what extent he is to be bound by the decision in the action and also to what extent he is to be allowed to interfere in it. The form of the order therefore should be carefully looked at; as it may well be that although the intention of the parties was that the matter should be put in course of investigation not only as between the plaintiff and defendant but also between the defendant and the third party, the order may not do what is necessary to effectuate this intention; and the result may be that the third party is only bound by the decision between the plaintiff and the defendant and nothing more: *The Carlsburn*, 5 P.D. 62. One reason for the introduction of third parties, which may be of more frequent occurrence in an action with pleadings than in one without, is that after a claim between the plaintiff and defendant has received a preliminary ventilation, and it is discovered that someone else is liable, or, as the same circumstances apply to other persons, the same results will probably follow from them as regards such other persons, that this ventilation should be of as extended application as possible, and that all persons who ought, should be bound by the decision. Thus, in *Treleaven v. Bray*, 1 Ch. D. 176 (which is more fully reported in 45 L. J. Ch. 113), where the plaintiffs and defendants alleged that the suit was caused by the conduct of a third party, it was laid down that leave will be granted that he may be served with notice of the suit, so as to enable the Court to have him before it to grant relief against him, on the application of the defendant with the consent of the plaintiff.

To a claim for not accepting shellac under a contract, the defendants pleaded that the shellac was bad. The defendants had contracted to supply good shellac to R. and O., and they cited R. and O. under Order 16. The Court allowed R. and O. to appear and defend as to the quality of the shellac and held that they should be bound by the verdict of the jury on that question; and reserved the question of costs till after the trial.

In *Swansea Shipping Co. v. Duncan*, 1 Q. B. D. 644, it was held that to entitle a defendant to serve a notice under Order 16, it is not necessary that the whole question between the plaintiff defendant and third person should be identical; and that it is sufficient if it appears that a material question in the action must be common to all. In *Bower v. Hartley*, 1 Q. B. D. 652 the Court seems to have gone even further. There it was held that a notice can be ordered to be served upon a third party if there is one question common to all, though the whole question between the plaintiff and defendant is not common to such third party.

Another test was, whether any question arises which for the purpose of being effectually settled requires the presence of third parties; whilst yet another way in which O. 16 is now most useful is when a defendant has a claim against a co-defendant, but no counterclaim against the plaintiff jointly with him, so as to use Order 21, r. 11. When he is brought in by counterclaim he appears under Order 21, r. 13. In the case put he cannot counterclaim, but he can bring in the claim against the co-defendant and have it tried

Instances.

Material question in action must be common to all.

Bower v. Hartley went further.

Further uses of Order 16.

Claim against co-defendant, but no counter-claim against plaintiff. See Chap. vii.

Questions
between
co-defend-
ants.

Costs.

*Murner v.
Bright.*

Notice
under rule
17.

Altern-
ative relief.

O. 16, r. 55.

News-
paper libel.

out in the action. *Furness v. Booth*, 4 Ch. D. 586 is the authority for this. The head-note says: "Questions between co-defendants may be raised by a pleading which states both a defence as against the plaintiff and a claim against a co-defendant, but such pleading is not a counterclaim, and delivery of it to the co-defendant is sufficient notice under rule 17." See also *Butler v. Butler*, 14 Ch. D. 329. When a third party comes in and defends, the Court can give him costs, or order him to pay them. This was decided by Kay, J., in *Piller v. Roberts*, 21 Ch. D. 198.

A good case upon the procedure between two defendants as to a matter with which the plaintiff has nothing to do is *Murner v. Bright*, 11 Ch. D. 394. It decides that where a defendant wishes to try an issue between himself and a co-defendant in which the plaintiff is not concerned, the proper course is for him to make a claim against him in his statement of defence, and to obtain an order in chambers that the delivery of the statement of defence to such co-defendant shall be notice under rule 17.

Where a plaintiff desires to join a defendant for the purpose of claiming alternative relief against him, he can do so under rule 6: *Honduras Inter-oceanic Ry. Co. v. Lefevre & Tucker*, 2 Ex. D. 301.

In an action for libel against the publisher of a paper, the proprietor was allowed to be added as a defendant upon the application of the plaintiff, under rule 13, but he was to have the same rights as he would have had if the action were then commenced: *Edwards v. Lowther*, 45 L. J. 417.

As to when a notice should be given under rule 17, and when a defendant should make a third party co-defendant to his counterclaim: see *Central African Trading Co. v. Grove*, 48 L. J. Ex. 510. When counter-claim and when notice under rule 17

In an action for money lent, the defendant set up a counterclaim joining T. as a co-defendant. He alleged a contract between himself and T. and a breach by T. That T. had transferred the contract to the plaintiff, and that the plaintiff had broken it. He claimed damages against the plaintiff, and in the alternative against T. It was held that T. should have been joined under rule 17.

From these cases it will appear that the defendant very frequently and under various circumstances avails himself of his power of bringing in third parties. He can never do so, however, when the Court sees that the introduction of a third party will tend to prejudice and cause additional expense and delay to the plaintiff, nor where the application is made late as, for instance, when the action has been set down for trial: *Associated Home Co. v. Whiccord*, 8 Ch. D. 447. Prejudice or delay, prevent.

A third party can serve a similar notice on a fourth party: *Witham v. Vane*, 44 L. J. Ch. D. 242; Notice to fourth party. but in *Yorkshire Wagon Co. v. Newport Coal Co.*, 5 Q. B. D. 268, some doubts were expressed as to this.

A defendant who might get himself struck out under rule 11 may even render himself liable to costs by not doing so and identifying himself with his co-defendant's case: *Twinberrow v. Braid*, 1878 W. N. 169; and the application should be made at Not getting struck out.

the earliest moment: *Vallance v. Birmingham & Midland Corporation*, 2 Ch. D. 372. See O. 16, r

Costs.
Third
parties' in
discretion
of Court.

The case which really decided that a third party might be made to pay to an unsuccessful defendant was *Hornby v. Cardwell*, 8 Q. B. D. 336—the costs payable by such defendant to the plaintiff, practically decided further that the Court could make any order as to the payment of costs by a third party where it seemed right. In that case it is true the third party would have been liable to his co-defendant for the costs as damages in an action, and it would have been giving complete relief had the matter been settled by the order for such payment. It was still in the case which Brett L.J. took, that a third party having been brought in wrongly, the case being a question between him and the defendant but really none between him and the plaintiff, if the third party was ordered to pay the plaintiff's costs it would be a hardship, and yet unappealable. Cotton L.J. however, suggested that the order might be appealed, which would do substantial justice. See also *Piller v. Roberts*, quoted above.

Result.

It may therefore be said that the action being in the plaintiff's hands he will be the first person considered, and that nothing will be done to delay or injure him, but that subject to this, the Court will do justice between as many parties as possible with relation to the subject or an important part of the same matter; and that the parties will be bound by the decision unless they can show that it is plainly wrong, and get it set aside straightforwardly and get struck out after notice.

Practice.

The substance, therefore, of the provisions of the Rules as to third parties was this. Where there

a question in an action either wholly or in a great part in common between A. v. B. or A. v. B. and C., and B. v. C., or where B. claims an indemnity from C., and the plaintiff will not be prejudiced or delayed materially or subjected to further costs thereby, this question need not be tried twice over; but where judgment is given in A. v. B. or A. v. B. and C., C. is bound by the judgment and cannot say that the action was not properly fought out.

The question between the various parties must be the question in the action or a material part of it. Thus where A. was grantee of one bill of sale given by B. and C. of a subsequent one, and C. seizes and A. brings an action for detinue against C., C. cannot counterclaim against A. and B. asking among other things that B. may pay him what is due to him under his bill of sale. This is not even a matter "relating to or connected with the original cause or matter:" Judicature Act, 1873, s. 24, sub-s. 3; *Barber v. Blaiberg*, 19 Ch. D. 476.

Nor does the practice apply to such a case as the following, because the plaintiff would be embarrassed if it did. Where it was attempted to make directors personally liable for paying dividends out of capital to shareholders, they cannot give notice to 450 shareholders of a claim to indemnity from them for such payment: *Wye Valley Ry. Co. v. Hawes*, 16 Ch. D. 489.

Where it is made to appear to a judge before or even at the hearing, that there is such a matter and that its trial will not hurt the plaintiff, notice has to be given by the plaintiff to the third party, and the

Nature of
question
between
the parties

Case in
which
plaintiff
embarrased.

Judge may
direct
notice
(rule 19).

hearing of the action may be postponed. No commentator has dealt with this rule (rule 19) and the Chy. Prac., is a misprint in it in Daniel, p. 272; but it is clear why "the plaintiff" should give this notice, at whose expense it is to be given.

Default of appearance. Section 20 said expressly that if the third party wishes to dispute the plaintiff's claim, he must enter an appearance or else he will be taken to admit the validity of the judgment obtained by him against the defendant. As to default in pleading by a third party see Order 29, r. 13, and O. 16, r. 50.

Proceedings on appearance (rule 21). If the third party appears an application to chambers for directions is made on motion or summons as to the mode of having the question in the action determined and as to the extent to which the third party is to be made liable by the decision, and at the hearing these directions limit the extent to which the question between the plaintiff and the third party can be gone into.

Application not *ex parte*. It must be remembered that the application to serve a third party notice must be made on notice to the plaintiff, and not *ex parte*: *Wye Valley Ry. v. Hawes*, 16 Ch. D. 489. It may be made by summons or motion supported by affidavit.

How brought in when remedy over. Copy of claim served with notice. When the defendant claims relief against a third party, he obtains leave to issue a notice stating the grounds of the claim sealed like a writ within a certain time for the delivery of the defence. Along with this notice a copy of the claim in the action must be served and if there is no claim a copy of the writ. When a question arises between a defendant and

co-defendant leave to serve a notice may be asked for, or leave to deliver a defence in which such question is raised and that such delivery shall be sufficient notice. This is done by summons and the order asked for can only be made by the consent both of the plaintiff and the co-defendant: *Marner v. Bright*, 11 Ch. D. 394. The delivery of a defence without an order was held sufficient in *Butler v. Butler*, 14 Ch. D. 329. See O. 16, rr. 49—56 inclusive.

Questions between defendant and co-defendant. When consent necessary.

An appearance must be entered in pursuance of such notice within eight days; but leave to appear afterwards may be given upon terms. If the notice was issued irregularly the service may be set aside upon the application of the third party; but in any case he should enter a conditional appearance. A third party so served is entitled to discovery from the plaintiff: *MacAllister v. Bishop of Rochester*, 5 C. P. D. 194; and he may put in a defence, but only to points not raised by the defence of the other defendants: *Witham v. Vane*, 1881 W. N. 79.

Time for appearance. O. 12, r. 22.

Discovery by third party.

When a defendant brought in a third party and then applied to the Court for directions under Order 16, r. 21, as to the mode of having the questions in the action determined and the Court refused to give any, it was held that the action must then be taken to have come to an end as regarded the third party: *Schneider v. Batt*, (C. A.) 8 Q. B. D. 201.

When Court refuses to give directions third party dismissed.

Order 11 as to service out of the jurisdiction applies to third parties: *Swansea Shipping Co. v. Duncan*, 1 Q. B. D. 644. See O. 11, r. 1.

Service out of jurisdiction.

Execution. As to execution by or against third parties, see Order 42, r. 21, and O. 16, r. 52.

Costs. As to the costs of third parties, see besides the cases already mentioned (*Hornby v. Cardwell* and *Piller v. Roberts*) *Beynon v. Godden*, 4 Ex. D. 246.

New practice. As to the new practice, see note to O. 16, r. 49. The effect of the new Rules is to confine the third party notice to cases in which the defendant claims *contribution or indemnity* only over against a non-party, and to where a defendant claims contribution or indemnity against a co-defendant. See *Bagot v. Easton*, 11 Ch. D. 392; *Schneider v. Batt*, 8 Q. B. D. 701. If the third party does not appear he will be taken to admit his liability, and judgment *on the trial of the action*, no subsequent action being now necessary, may be entered against the third party, although execution cannot be issued without leave. See r. 52.

CHAPTER V

WRITS OF SUMMONS.

THE procedure under the Judicature Act as to writs of summons was as follows :—

Under Order 2, r. 1, the writ must be endorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action. This would appear to mean that the plaintiff is to put upon his writ what he wants to get from the defendant, and not the grounds upon which his want is based. Rule 2 says that costs caused by the use of other forms of endorsement than those in Appendix "A" must be borne by the party using them unless the Court otherwise directs ; but rule 3 modifies this by saying that there may be such variations as circumstances require. When the plaintiff sues in a representative capacity this must appear upon the writ. **O. 3, r. 4.**

It seems therefore that although it is safer to use one or more of the forms of endorsement in the schedule to the Act as the exact precedent in an action, it is not absolutely necessary to do so, and that any endorsement of a similar nature more suited to the circumstances of the particular case may be used ; and that the chief rock of offence is prolixity. See **O. 2, r. 2.**

The issue of a writ of summons is not a judicial act so as to be presumed to have taken place at the

Endorsement.

Time of issue of writ.

earliest moment of the day of date, but a Court can enquire at what time in the day it was as a fact issued; as if it was issued before the cause of action arose it appears that it might be demurred to. A statement of claim under such circumstances would seem to be demurrable from *Clarke v. Bradlaugh*, (C. A.) 8 Q. B. D. 63.

Also as to the calculation of time to prevent the Statute of Limitations running, see *Morris v. Richards*, 45 L. T. 210; and as to the enlargement of time, O. 64, r. 7.

Amend-
ment of
writ.

O. 28, r. 1.

The endorsement of a writ can be amended: Order 3, r. 2; but when the statement of claim has been delivered and all that is desired is asked for in it this will not be necessary except in the case of a claim for an account: see p. 87, *Johnson v. Palmer*, 4 C. P. D. 262. See also *Large v. Large*, W. N. 1877, 198.

Demurrer
to writ.

Example
of this.

A writ might also have been demurred to provided it did not disclose a cause of action; and this was sometimes a speedy method of getting a judicial opinion as for instance upon a legatee's rights under a will. Of course this method of proceeding must be agreed upon with the executors or other defendants, and then the legatee claims administration and gets the personal representatives of the testator whom he has made defendants in his action to demur to the writ upon the ground that he is not a legatee at all, and that therefore the writ shows no claim against them. A demurrer was allowed by Lindley, J., to a specially endorsed writ with notice under Order 21, r. 4, that the particulars of the plaintiff's complaint, and of the relief and remedy to which he claimed to be entitled, appeared by the endorsement upon the

writ of summons. He said (*Robertson v. Howard*, 3 C. P. D. 281: not followed, *Fawcus v. Charlton*, 10 Q. B. D. 516), "I think that a specially endorsed writ, coupled with notice under Order 21, rule 4, is to be treated as a statement of claim for all purposes, and may be demurred to. It is a pleading within the meaning of Order 28, rule 1." His judgment in the case was also valuable as an authority that in a writ an allegation of "money owing upon an agreement" is not sufficient to prevent a demurrer on the ground of the agreement being without consideration, if the agreement is set out and does not show any consideration; for in such a case no cause of action is disclosed by the writ. The endorsement was:—"The following are the particulars of the plaintiff's claim. 1878, February 25th.—To amount owing upon an agreement or undertaking, given by the defendant to the plaintiff, on the 12th day of September, 1876, £100. The following is a copy of such agreement or undertaking: To Mr. Robertson. Liverpool. September 12th. Dear sir, I agree to give you the sum of £100 in the event of getting the contract for plumbing, painting and glazing of hotel, bank, &c., to be built at New Brighton. (Signed) T. Howard." Had this agreement not been set out at length, the writ could not have been demurred to.

Specially
endorsed
writ with
notice.

Also under Order 27, r. 11, the Court or a judge might at any stage, and now he has still fuller powers to allow the plaintiff to amend the writ of summons in such manner and on such terms as may seem just. The application should be made by summons and not by motion. If made by motion, the costs allowed will not be more than those of a counsel-summons:

Amend-
ment.

By sum-
mons in
chambers

Marriott v. Marriott, 26 W. R. 416. Indeed, all applications of a similar character are now generally made by summons, even in the Chancery Division which here again has assimilated its practice to that of the Common Law side.

Claims can
be joined.

Almost all sorts of claims can be joined and should appear upon the writ, as for an account a receiver or an injunction along with any other claim; but if the necessity for any such thing arises during the action it can be obtained without amending the writ. The few causes of action that cannot be coupled, viz., recovery of land with anything not connected with the land itself, as for instance mesne profits, have been already referred to.

Under the Judicature Acts writs of summons may be divided into six classes, although Mr. Wilson accurately states that four different kinds of endorsements only are dealt with in order, viz.: (1) ordinary common law writs about which enough has been said; (2) writs for the recovery of land; (3) the class referred to in Order 3, rule 7; (4) writs for an account under rule 8; (5) writs in matters specially assigned to the Chancery Division; and (6) specially endorsed writs under rule 6. Under the new Rules, O. 3, rr. 1—5, deals with one class, r. 6 with special endorsements, r. 7 with “debt and costs,” and r. 8 with “account.”

Claim for
debt or
liquidated
demand.

Rule 7 says: Whenever the plaintiff's claim is for a debt or liquidated demand only, the endorsement besides stating the nature of the claim shall state the amount claimed for the debt or in respect of such demand and for costs respectively; and shall further state that upon payment thereof within four days after service, or in case of a writ not for service

within the jurisdiction, within the time allowed for appearance further proceedings will be stayed. Here the old practice under section 8 of the Common Law Procedure Act is preserved with respect to a stay of proceedings upon payment within four days. It must be observed that this rule only applies where the claim is for a debt or liquidated damages and for nothing besides.

If the plaintiff accepts payment after the four days costs can be taxed against him, whether the sum claimed is paid or a summons taken out to have the action stayed upon payment of the sum claimed and taxed costs: *Hoole v. Earnshaw*, 39 L. T. 410. Costs, how taxable.

This form of writ is used when it is desired to sue the defendant at once for a debt or liquidated demand the amount of which is known, even though full particulars of it are not at hand so as to enable the plaintiff to use a specially endorsed writ. Time then runs in favour of the plaintiff, and he need not go through the formalities of delivering a statement of claim and the other incidents of an action, but may file particulars of his debt or liquidated demand if the defendant does not appear in the prescribed manner; and then if he continues to make default judgment is signed speedily in his favour. When used.

So much for the advantages of this form of writ to the plaintiff; but great as they are far greater are those which the defendant derives from its use. In the first place he knows upon what exact terms the claim can be settled, and if the money is paid within four days the costs are nominal. As a matter of fact although from two to three guineas according to the distance the defendant lives from Advantages of it.

the office of the agent who has to serve him (if any) is generally put upon the writ as the amount of costs he has to pay, more than one and a-half guineas will seldom be allowed besides mileage or agency charges.

In fact he has not when this writ or the specially endorsed writ under **Order 3, r. 6** (which is only a more particular and strict form of it) are used, to pay a bill of costs as he would have if sued for instance for damages. He could not pay the damages unconditionally into court for he would not know the amount of them, and in ascertaining would be incurring costs. Here however he knows at once all he has to pay to get rid of the claim out and out, and summary justice is effectually done in a most inexpensive manner in the case of both classes of writ; while in the endorsements credit can be allowed to the defendant for any claims due to him when necessary, and yet the same advantages to both parties be retained.

Credit. When however the plaintiff gives credit for any sums in his demand, either in the case of a specially endorsed writ in the special endorsement itself, or under **rule 7** in the particulars, he must state the items of such sums, unless they are such as would be more within the knowledge of the defendant than of the plaintiff: *Godden v. Corsten*, 5 C. P. D. 17.

Set-off. In the case of a set-off where the plaintiff is not certain of the amount it would seem best for him not to refer to it in his particulars; but to leave the defendant to set it up and pay the difference into court, which he would probably have to do, as the price of obtaining leave to defend as to the part not admitted. The question of items is

considered at greater length hereafter, when the case of specially endorsed writs is treated of separately.

The claim for an account applies according to **rule 8** to all cases of ordinary account, as for instance to the case of a partnership or executorship or ordinary trust account, where the plaintiff in the first instance desires to have an account taken. In these cases the writ must be endorsed with a claim that such account be taken. This rule must be read with **Order 15, r. 1.** In default of appearance (1) to a summons endorsed under **Order 3, r. 8**, and after appearance, (2) unless the defendant by affidavit or otherwise satisfy the Court or judge that there is some preliminary question to be tried, an order for the account claimed with all directions now usual in the Court of Chancery in similar cases shall be forthwith made. This form of endorsement is most useful in cases where it is believed that some sum is due from the defendant to the plaintiff, but it is not known how much, and by the use of it the amount can be ascertained in the most inexpensive way.

It will be noticed that **Order 3, r. 8**, says imperatively, "the writ of summons shall be endorsed with a claim that such account be taken." It is therefore desirable that the writ should be endorsed with a claim for an account whenever it is probable that an interlocutory application for this purpose may be desirable; as if it is only inserted in the statement of claim the writ will have to be amended to comply with the terms of the rule. See, however, **O. 20, r. 4.**

It is for the defendant to satisfy the Court that Prelimi-

nary
questions.

No
accounting
relation.

there is some preliminary question to be tried, as for instance that there did not exist between the plaintiff and the defendant the relation which would render this rule applicable. What the preliminary question is will depend upon the circumstances of each case, and there are few cases reported in the law reports which throw any light upon it, and yet this form of writ is frequently used in the Chancery Division. "Many matters are settled under Order 15 without the action going any further," are the words of Bacon, V.-C., in *Gatti v. Webster*, 12 Ch. D. 774. It cannot however be used against an executor for an account on the footing of wilful default.

Instance.

In a case before Jessel, M.R. (*Sharp v. Tattam*, 1879), in which the plaintiff was a London solicitor, who sold his business which consisted chiefly of agency to his managing clerk upon the terms that the latter should pay him so much per cent. upon all business done for his country clients for a certain time, the writ was endorsed with a claim among other things for an account. Upon a summons being taken out for an account at once the late Master of the Rolls ordered it, though it was strongly urged that the defendant had a counter-claim against the plaintiff for work done for him while his managing clerk; and that this having become due before the right to an account in respect of the sale of the business had accrued, it was a preliminary question, and that the accounts of what was due from the plaintiff to the defendant and from the defendant to the plaintiff ought to be taken together when ordered at the hearing. The late Master of the Rolls held that this was not a preliminary question and ordered the account,

Prevents
delay.

which practically disposed of the action and prevented any delay.

Another case in which it was used was one in which the grantor of a bill of sale sued the grantee who had sold the goods among other things for an account. He had no means of ascertaining what the goods fetched; and if they had been properly sold and had not realised the amount lent under the bill of sale so far from the plaintiff having any claim against the defendant, he would have had a claim against the plaintiff. In order to ascertain the facts in the cheapest possible way a summons for an account under that rule was taken out and the account ordered in chambers. Useful for discovery.

In Seton (vol. ii. p. 1036) it is said that this rule is applicable to the case of accounts between a mortgagor and his mortgagee, but no authority is given for the statement; and at p. 1208 reference is made to *Bellesby v. Smith*, M. R. 2nd Dec. 1876, "A" 2156, for an order under this rule directing an account of the dealings and transactions prior and subsequent to the death of a partner, and an inquiry as to capital and the payment of balances by the defendant. Account between mortgagor and mortgagee.

In this way too the ordinary creditor's administration decree may be obtained; but a district registrar can only make it in default of appearance: *Irlam v. Irlam*, 2 Ch. D. 608. But see *In re Smith*, 6 Ch. D. 692. In an administration action by the administratrix with the will annexed against the executors, a statement of claim was ordered by Bacon, V.-C., *In re Huckwell, David v. Dalton*, 1879 W. N. 86. Creditor's administration.

Account-
ing rela-
tion

In *Rumsey v. Reacle*, 1 Ch. D. 643, where a defendant who was agent for trustees in a trust estate admitted that he was liable to account, and that he had in his possession securities belonging to the trust estate, the Court, on motion by the trustees (notice of which was given to the defendant), made an order directing him to account and to hand over the securities. If there is no preliminary question to be tried an order for an account will be made upon the applicant showing that an accounting relation between the parties exists; but if the balance due is found against him he will have to pay the costs of taking the account; as also if there is no necessity for one or if he could have got it by asking for it. In a word he is entitled to an account but has no right to put his opponent to the expense of it unnecessarily.

Accounts
taken by
chief clerk.

When an account is being taken before a chief clerk, if an item is found against a party upon a question of principle he should take an adjournment before the judge at once without taking out a summons. In other cases the account should be completed before the adjournment is taken: *Upton v. Brown*, 20 Ch. D. 731.

District
registrar.

Although a summary order for an account under Order 15, r. 1, cannot be made by a district registrar, it can under O. 35, r. 4, and if the order so directs but not otherwise he can then proceed to take the account himself, yet he must state in his report the persons who were present before him and the materials upon which he proceeded: In re *Bowen*, *Bennett v. Bowen*, 20 Ch. D. 538. See also Order 33 and Jud. Act, 1873, s. 66; and as to costs, *Beaney v. Elliott*, W. N. 1880, p. 99.

The last and most important class of writs of **Specially endorsed writ.** summons is that which bears the special endorsement, which makes a writ what is called a specially endorsed writ under rule 6. This class will now as it would seem assume even greater importance under the new practice. Rule 6 says that, when a plaintiff seeks merely to recover a debt or liquidated demand in money with or without interest arising upon a contract express or implied, as for instance on a bill of exchange promissory note cheque or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money, or in the nature of a debt or on a guarantee (whether under seal or not) where the claim against the principal is in respect of such debt or liquidated demand, bill cheque or note or on a trust; the writ may be specially endorsed with the particulars of the amount sought to be recovered after giving credit for any payment or set-off. This means in effect that a writ may be **Demand must be ascertained.** specially endorsed, (1) with the amount claimed, and (2) giving credit for any payment or set-off wherever the claim is for a debt or ascertained demand under a contract.

The instances given are, (1) a simple contract **Instances given.** debt, (2) a contract under seal, (3) a penalty under a statute, (4) under a guaranty under circumstances where the principal could have been thus sued, (5) a trust. The rule extends section 25 of the Common Law Procedure Act by including in the cases under it that of a liquidated sum payable on a trust, and the case of the defendant being out of the jurisdiction of the Court.

Advantages.

The advantage derived from the use of this class of writ is not only that the plaintiff gets final judgment in default of appearance under **Order 13, r. 3**, as he does under **rule 7** after filing particulars which of course he need not do here, but also that he gets final judgment notwithstanding appearance, unless the defendant can satisfy the Court or a judge that he ought to be allowed to defend the action under **Order 14, r. 1**, which says: Where the defendant appears to a writ of summons specially endorsed under **Order 3, r. 6**, the plaintiff may on affidavit made (1) by himself, (2) or by any other person who can swear positively to the debt or cause of action, (A) verifying the cause of action, and (B) stating that in his belief there is no defence to the action, call on the defendant to show cause before the Court or a judge why the plaintiff should not be at liberty to sign final judgment for the amount so endorsed, together with interest if any and costs. A copy of the affidavit must accompany the summons or notice of motion.

Appearance.
Procedure
under
Order 14.

See **O. 14, rr. 1—6.**

Perjury in
affidavit
for leave
to defend.

It was forcibly pointed out in the "Law Journal" in the spring of 1882, that **Order 14** was productive of much perjury by reason of the cultivation of the imagination it fostered in the case of those making the affidavit for leave to defend. But it is suggested that because what is really a most beneficent measure has been misused by unscrupulous practitioners, its usefulness if properly used (and it must always be presupposed that an enactment will be fairly used), is not thereby lessened. As a matter of fact, as will be seen hereafter, **Order 14** has been abused in other ways. Seldom however is exception taken to what seems a real fault in the Order. Take the

case of a claim for £50 for goods sold and delivered, and the affidavit for leave to defend taking the ground that the period of credit given when they were sold had not expired. Leave to defend would be given, and the action drag its slow length along; whereas, if a judge could have directed this (which was really the only issue between the parties which had to be settled) to be tried out at once, summary justice would have been done. Real objection to O. 14.

However to resume. The Court or a judge may thereupon, unless the defendant (1) by affidavit, O. 14, r. 2. (2) or otherwise satisfies the Court or a judge that he has a good defence to the action on the merits, or discloses such facts as may be deemed sufficient to entitle him to defend, make an order empowering the plaintiff to sign judgment accordingly. As may be supposed all claims that could be brought under this rule have been so brought; and it is now the common practice on the Common Law side to use its procedure to force the hand of the defendant, and to discover by means of the affidavit which he puts in to get leave to defend what his defence is. It is therefore most necessary to see exactly what constitutes a specially endorsed writ. The leading case upon this is *Walker v. Hicks*, 3 Q. B. D. 8, where the endorsement was, "The plaintiff's claim is £399 9s. 7d., the defendant's share or contribution to the payment of certain bills of exchange and promissory notes, on which he and the plaintiffs were jointly liable, and which bills and notes have been taken up by the plaintiffs." This was held not to be a special endorsement, and Cockburn, C.J., said, "The object of the special endorsement is this: on the one hand it is to have a very prompt and sum- For discovery. What constitutes a special endorsement.

Particu-
lars must
be given.

mary effect in favour of the plaintiff, by entitling him to apply to sign final judgment under Order 14; and on the other hand it is intended that the defendant should have an opportunity of avoiding such further proceedings by payment of the debt. I think the defendant is entitled to have sufficient particulars to enable him to satisfy his mind whether he ought to pay or resist. The examples given in the schedule are specific, and he should know specifically what is the claim against him." And Mellor, J., said that it was very important to prevent any loose dealing with regard to the form of special endorsements. Therefore it would appear that to make the above a special endorsement the dates and amounts of the various bills and notes should have been given. Where credit is given to the defendant for a certain payment the items should be stated. In *Godalen v. Corsten*, 5 C. P. D. 18, which was not the case of a specially endorsed writ particulars were ordered to be given, and a fortiori they would be required in such a case. The date and amount of each item should be given in a specially endorsed writ: *Parpaite Frères v. Dickenson*, 26 W. R. 479; see also 41 L. T. 521.

Where ap-
plicable.

In Mr. Foulkes' edition of Smith's Action, at p. 49, the following statement occurs:—"The special endorsement is applicable to cases of liquidated demand only. A liquidated demand arises in an action of debt when the defendant is charged with a promise to pay so many pounds shillings and pence, or it is alleged that there is an agreement between plaintiff and defendant for the payment of a sum of money, and the amount either resolves itself into a mere matter of calculation, or has been left to be deter-

mined by what is reasonable." It is not certain however that where the amount resolves itself into a matter of calculation, or is left to be determined by what is reasonable, a writ can be specially endorsed. Exact amounts must be given, and nothing must be left to be determined in any way; every item must be given, and the result drawn therefrom must appear upon the writ itself. In the case of goods sold, in Appendix "A," part ii., s. 7, we find certainly—1873, December 31st. Balance of account for butcher's meat to this date, £35 10s.; 2nd. February, 1874. To goods, £47 15s. Bond dated January 23rd. Principal £50. Interest blank; but the dates there given are sufficient to identify the amounts, and the interest, being a very minor matter, could easily be reckoned. In the sixth example the plaintiff's claim is for principal and interest due under a covenant. The following are the particulars:—Deed dated blank. Covenant to pay £100 and interest. Principal due £80. Interest blank. The date should have been inserted, and it would certainly be safer not only to insert it, but also to state the term for which interest is claimed under the deed. The form of the endorsement should properly be that of an account or tradesman's bill. See also *Smith v. Wilson*, 5 C. P. D. 25.

Where
accounts
stated.

The summons by the plaintiff to sign judgment must be taken out promptly and is not now returnable until four clear days after service; and the copy of the affidavit of the plaintiff or any other person who can swear positively to the debt or cause of action, which must verify the cause of action, and state that in the belief of the deponent there is no defence to it, must be served with the summons. O. 14, r. 2.

The sum-
mons to
sign judg-
ment.

Copy affi-
davit veri-
fying must
be served.

Then the Court unless the defendant by affidavit or otherwise satisfies the Court that he has a good defence to the action on its merits, or unless he dis-
 0 14, r. 5. closes such facts as may be deemed to be sufficient to entitle him to defend, may allow plaintiff to sign judgment. If the defendant goes beyond the bare statement that he has a defence on the merits, and shows what the grounds of his defence are, giving reasons for thinking that the defence is substantial, he ought not to be compelled to pay money into Court as a condition of his being let in to defend: *Runnacles v. Mesquita*, 1 Q. B. D. 416.

Signing
judgment.

But if the defendant makes no affidavit of merits, he is not entitled as a matter of right to defend the action upon offering to bring the sum claimed into Court; a discretion being vested in the judge to decide whether upon considering the other facts of the case the defendant's offer is sufficient ground for refusing the plaintiff's application to sign judgment at once. Bramwell, B., said, in *Lloyd's Banking Co. v. Ogle*, 1 Ex. D. 263, that the power to sign judgment was intended to apply to those cases which almost on the admission of the defendant are undefended, and not to cases in which the defendant might reasonably say, "I do not know if your case is well founded or not, but I require you to prove it;" and that where a guarantor bona fide says that he does not know that the debt is due, and that he requires it to be proved, the statute was not intended to operate to take that right from him.

How
defendant
shows
cause.

The way in which the defendant is to show cause why final judgment should not be signed, is stated in rule 3 to be by offering to bring into Court the

sum endorsed on the writ, or by affidavit; but in rule 1 the old words used were, "unless the defendant by affidavit or otherwise satisfy the Court." In *Davis v. Spence*, 1 C. P. D. 719, Lindley, J., says that it is obvious that the defendant's affidavit in answer is not final; for rule 3 provides that the judge may, if he thinks fit, order the defendant to attend to be examined upon oath, or to produce any books or documents, or copies of or extracts therefrom. In *Girvin v. Grepe*, 13 Ch. D. 177, Jessel, M.R., says: "The judge is to exercise a discretion. I entirely agree that he is not to try the action on affidavits alone; but the rule says, 'or disclose such facts as may be deemed sufficient to entitle him to defend.' There is no real difficulty in deciding whether or not the defendant ought to be allowed to defend, after admitting affidavits in reply, or in rejoinder, to any extent that the judge thinks it right to give leave, not forgetting that you may cross-examine a defendant, or call upon him to produce documents, also with a view to satisfying the mind of the judge." In *Davis v. Spence* the affidavit of the defendant is set out at full length; and it affords a good illustration of the class of case in which a judge will, in his discretion, allow an affidavit in reply to be filed by the plaintiff. See O. 14, r. 3.

Although we have the judgment of Jessel, M.R., in *Girvin v. Grepe*, that any condition limiting the defendant's common law right to appear in court and defend should be construed most strictly against the plaintiff, it must be particularly noticed that rule 3 says that the defendant in his affidavit shall state whether the defence he alleges goes to the whole or part only, and if so to what part of the Defendant's affidavit must be specific.

- plaintiff's claim. Therefore the defendant's affidavit must be specific and must deal with the items in the endorsement on the writ; and it may be inferred that the discretion of the judge will probably be exercised by giving the plaintiff judgment for those items which are not satisfactorily dealt with, and by giving the defendant leave to defend without having any terms imposed on him with regard to such items as to which he has disclosed a defence on the merits.

Should
give par-
ticulars.

See O. 14,
r. 3.

Affidavits to entitle a defendant to defend should condescend upon particulars. It is not enough to say I do not owe you the money. Of course if this were true it would be a good defence; but it is not enough to satisfy a judge. Reasonable ground for saying so must be alleged. It is not enough to allege fraud; but such an extent of definite facts pointing to the fraud must be set out as will satisfy the judge that there are facts which make it reasonable that this defence should be raised. The same applies to every defence that might be mentioned: Blackburn, J., in *Wallingford v. Mutual Society*, 5 Ap. Ca. 704.

Defendant
admitting
part.

Even in a case in which the defendant admits that he owes a certain sum, and shows a defence as to the residue, the Court will not require the defendant to pay the amount admitted to be due as a condition of being allowed to defend as to the residue. The order will be, plaintiff to have judgment for the amount admitted to be due, the defendant to have leave to defend as to the residue. This was decided by Kelly, C.B., and Hawkins, J., in *Dennis v. Seymour*, 4 Ex. D. 81. Bramwell, L.J., in *Standard*

Discount Co. v. La Grange, 3 C. P. D. 71, calls attention to the words at the end of rule 1, saying that it was not meant that the Court or a judge should give judgment, but should merely give a direction as to the mode in which the action should be conducted. This case decided that an order empowering a plaintiff to sign judgment is interlocutory, and that an appeal against it must be brought within twenty-one days.

Order to sign judgment interlocutory.

Rule 6 says expressly, "leave to defend may be given unconditionally, or subject to such terms as to giving security, or time and mode of trial, or otherwise, as the Court or a judge may think fit." What the words "or otherwise" here mean it is hard to say. From *Dennis v. Seymour* it is clear that they do not mean upon payment into court of a part of the claim admitted to be due by a certain day. It may be that they have reference only to a case in which leave to defend as to the whole claim is given upon payment of the sum claimed into court.

Leave to defend.

Giving security or paying the amount of the claim into court should not be ordered unless there is something suspicious in the defendant's mode of presenting his case: per Bramwell, B., in *Lloyd's Banking Co. v. Ogle*, 1 Ex. D. 264.

Security.

Where there are several defendants, and the Court thinks that one or more has a good defence and the other or others have not, leave to defend may be given to the former, and the plaintiff shall be entitled to enter final judgment against the latter and may issue execution, without prejudice to his right to proceed against the former (rule 5). Of course, the plaintiff need not sign judgment—it is not obligatory on him

Several defendants.

to do so—and Bramwell, L.J., in the *Standard Discount Co. v. La Grange*, gives cases in which he says he can conceive that a plaintiff may not wish to enforce the order.

As an instance of a case in which Order 14 is not applicable, see *Hill v. Sidebottom*, 47 L. T. 224. There a plaintiff specially endorsed the writ in a foreclosure action with a claim for payment of the mortgage debt. Fry, J., held that he could not obtain a summary order to sign judgment.

It is hardly necessary to state that proceedings under Order 14 are optional with the plaintiff; and the result of the cases appears to be that he will not be allowed to profit by using it, except perhaps for the purpose of finding out what defendant's defence is, unless the defendant acknowledges the whole or part of the debt, or it appears from that or other circumstances that the defence would be for mere purposes of delay. An affidavit that the defendant has been misled by the endorsement might get him leave to defend, but in the absence of such an affidavit an endorsement like—To goods, with dates and sums giving credits, also with dates and sums and carrying out the balance is sufficient: *Smith v. Wilson*, 4 C. P. D. 394; on Appeal, 5 C. P. D. 25. The decision of a judge at chambers will not be reviewed unless a strong case is shown: *Lloyd's Banking Co. v. Lloyd*, where Bramwell, B., says, "I should have hesitation in such a matter in overruling the order of a judge at chambers."

Order of
judge in
chambers,
when final.

It is not necessary to file an affidavit in support of an application for leave to amend a writ when

the right is clear: *Conybeare v. Lewis*, 29 W. R. 391.

An application to set aside the writ when the residence of the defendant was mis-described was refused: *The Helenslea*, 7 P. D. 57.

Mis-
description
of defend-
ant's resi-
dence.

As to the renewal of writs after the original twelvemonths for which they are in force has elapsed, see *Re Jones, Eyre v. Cox*, W. N. 1877, p. 38.

Renewal.

CHAPTER VI.

APPEARANCE, ETC.

Where
entered.

O. 12,
rr. 1—7.

A writ may be issued either at the Central Office in London or in a District Registry but if the writ is issued in London the defendant appears in London, and if in a District Registry he can appear either in London or in the District Registry unless he lives or carries on business in the District Registry, in which case he must appear there. Where there are several defendants if even one of them not being merely a formal defendant appears in London, the action proceeds in London, but otherwise in the District Registry.

Method of
entering.

O. 12, r. 8.

The way in which appearance is entered is by delivering to the proper officer two written memoranda dated the day of delivery stating the defendant's solicitor's name or that he defends in person and an address for service; one of which that officer returns sealed and marked with the date of sealing, and the forwarding of this returned memorandum, together with a notice of such appearance in due course of post to the plaintiff's solicitor, or to the plaintiff if suing in person completes the appearance.

Partners.

Partners appear individually, but even though only one partner constitutes the firm, proceedings

continue in the name of the firm when the action is **O. 12, r. 15.** brought against the firm's name. Where from a defence it appeared that at the time the cause of action arose the defendant was in partnership and he had obtained leave that the writ might be amended by inserting the name of the other partner and a defence was put in for the other partner, but no appearance was entered for him, it was struck out by Fry, J. in *Taylor v. Collier & Co.*, 1882 W. N. 83. See p. 69.

In a writ for the recovery of land any one though Recovery of land. not named a defendant, may by leave appear and defend as to the whole or part of the land (but he must be named as a defendant in the subsequent **O. 12, r. 25.** proceedings), on filing an affidavit showing that he is in possession of the land either by himself or his tenant. See p. 108.

Though a defendant has only eight days after Time. service inclusive of the day of service given him by the writ for appearance, he can yet appear at any See writ itself. time before judgment; but he will not get any further time except by leave for the delivery of his defence. See **O. 12, r. 22.**

The proper way for the plaintiff to take advantage of any irregularity in the defendant's mode of appearance or of his default of appearance, is in all How irregularity taken advantage of. common law actions by signing judgment for any sum not exceeding the sum endorsed on the writ **O. 13, r. 3.** together with interest at the rate specified, if any, to judgment and a sum for costs, as in default of appearance under **Order 13.** Where judgment has How judgment set aside. been so signed it cannot be set aside without an affi-

davit of merits, and when irreparable mischief would be done by acceding to a tardy application, it being a departure from the ordinary practice, the person who has failed to act within the proper time ought to be the sufferer; but in other cases the objection of lateness need not to be listened to, as any injury caused by the delay can be compensated by the payment of costs: Bramwell, L.J., in *Atwood v. Chichester*, 3 Q. B. D. 723.

District
Registry
writs.

When a writ is issued in a District Registry and is served outside it, notice of appearance must be sent to the address for service within the limits of the District Registry; notice of appearance given at the address for service in London being insufficient. This was laid down in *Smith v. Dobbin*, 3 Ex. D. 338, which was under the old rule, Order 12, r. 6a, and which explains what is a sufficient address; and Order 13, r. 5a, says that where a defendant fails to appear to a writ issued in a District Registry, judgment shall not be signed, if the defendant had the option of appearing in London (under rule 3, Order 12), till a letter posted in London by the country mail the night before should have reached him.

Proceedings under the Bills of Exchange Act having been abolished (O. 2, r. 6), except in the County Court, no delay beyond the ninth day is necessary.

Proceed-
ings in de-
fault.

The proceedings to be taken in default of appearance are regulated by Order 13.

Guardian
ad litem.

In the case of a defendant who is an infant or person of unsound mind, an application must now be made to the Court to appoint a guardian ad litem

upon proof of service of the writ, and of notice of the application having been left six clear days at the house of the person with whom the defendant resides, and also at the house of the father or guardian if not the same. Order 13, r. 9, applies to persons of unsound mind: *Taylor v. Pede*, 44 L. T. 514. See O. 13, r. 1.

Before the plaintiff can take any proceedings in default of appearance, he must file an affidavit of the service of the writ, or of notice in lieu of service: **Order 13, r. 2.** See *Bristow v. Bristow*, 14, Ch. D. 849. Affidavit of service.

The consequences of non-appearance vary according to the endorsement upon the writ of summons. In the case of a specially endorsed writ the plaintiff may at once sign final judgment, and execution will at once issue, (1) for any sum not exceeding that endorsed upon the writ, (2) and for interest at the rate specified (if any) to judgment, (3) and a sum for costs. In the case of endorsements under **Order 3, r. 7**, that is, where the claim is for a debt or liquidated demand alone, not only must the affidavit of service of writ or of notice in lieu be filed as in the case of specially endorsed writs, but also particulars of claim; and then eight days after such filing final judgment may be entered for not more than was endorsed on the writ, and costs to be taxed. Non-appearance, consequences.

It is difficult to see why a plaintiff should choose this mode of endorsement, and by consequence, this rule to proceed under. It only applies to a debt or liquidated demand in money, and this with the particulars which have to be afterwards filed would together almost always be equivalent to a writ which

might have been specially endorsed under **Order 3, r. 6**, in the first instance.

Unliqui-
dated
damages.

See **O. 13,**
r. 5.

Writ of
inquiry.

Reference.

Writ of
delivery.

The third form of endorsement requires only passing notice, viz., when the claim is for unliquidated damages or detention of goods or both. In this case if appearance is not duly entered interlocutory judgment can be signed, and a writ of inquiry issues to assess the value of the goods or damages claimed in the writ of summons. Of course no matters not disclosed by the writ of summons will be gone into before the deputy-sheriff who holds the inquest, and then only the question of the amount of them and not whether there is a defence on the merits or not. As this is an expensive process, the rules **5, 6** and **7**, under which these proceedings may be taken, the latter two of which are new, provide another method which may be followed with advantage, and that is in effect a reference to a master or if necessary the official or a special referee or even a judge, see **O. 36**. The words are, "But the Court or a judge may order that instead of a writ of inquiry the value and amount of damages or either of them shall be ascertained in any way which the Court or judge may direct." In *Ivory v. Cruikshank*, 1875 W. N. 249, an action for rent and for the return of specific goods, the plaintiff was allowed to sign judgment for the return of the specific goods retained, and to enforce it by writ of delivery under **Order 42, r. 4**. In order to come under this rule it must be seen that some assessment of damages is necessary, and that the claim is not a liquidated demand where final judgment can be entered without any assessment. Where there are several defendants some of whom do not appear the action goes on as if they had under **rule 4**.

In *Dix v. Groom*, 5 Ex. D. 92, the writ was endorsed, "The plaintiff's claim is £102 8s., upon a bond to secure payment of £150 and interest," and a statement of claim was put in, and in it the plaintiff claimed £150, and afterwards got a writ of inquiry. Upon the defendant taking out a summons to set it aside for irregularity it was held that this was a debt or liquidated demand, and that plaintiff should have signed final judgment and that no writ of inquiry was necessary. In a word, the question to be determined must be one of amount only and not of title to be determined by a writ of inquiry. See O. 38, Part IX., and p. 112.

Writ of inquiry assesses damages only.

The fourth class of endorsements for matters which have been assigned to the Chancery Division does not entitle the plaintiff to do more than proceed as if he had appeared after filing his affidavit of service or of notice in lieu of service, upon the non-appearance of the defendant. He will therefore file his statement of claim, *Minton v. Metcalf*, 46 L. J. Ch. 584; *Renshaw v. Renshaw*, 49 L. J. Ch. 127; a notice of filing it and if necessary an affidavit, and then move for judgment. This motion may be also filed, *Morton v. Miller*, 24 W. R. 723; even though the defendant is out of the jurisdiction: *Gardiner v. Hardy*, 1876, W. N. 185.

Matters assigned to Chancery Division.

In the case of the fifth class of writs namely that for an account, upon failure of appearance by the defendant, and also in the event of appearance unless the defendant by affidavit or otherwise satisfies the Court that there is some preliminary question to be tried, upon the filing of an affidavit of service or notice in lieu thereof the account will be ordered at

Claim for account.

once upon summons, supported by an affidavit setting out the grounds of the application.

Recovery
of land.

See O. 13,
r. 8.

In actions for the recovery of land where the defendant does not appear or appears and defends as to part only judgment is entered at once as in the case of specially endorsed writs, that the person whose title is asserted in the writ shall recover possession of the land or the part of it to which the defence does not apply. If there is on the writ a claim for mesne profits or arrears of rent or damages in connection with the land, and there is a question of amount to be ascertained, judgment can be entered for the land and the amount ascertained as in the cases before referred to.

Form of
judgment.

The form of judgment is given in Appendix D. No. 2. It is: "Title. Date. No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the said writ mentioned." While that in the case of a liquidated demand is: "The defendant not having appeared to the writ of summons herein, it is this day adjudged that the plaintiff recover against the said defendant £ , and costs to be taxed."

See p. 112. The procedure in default of appearance is summarised in the table at the end of this chapter.

One or two remarks will here be made upon a defendant's proceedings after appearance; although the proceedings of the defendant, after the writ of summons has been served upon him, will in a great measure depend upon the nature of the claim and the defence he has to it.

For instance in the case of a writ for an account under Order 15, r. 1, the first thing to be considered is, whether there is any preliminary question to be tried or not. The intention of the legislature, as stated by Bacon, V.-C., in *Gatti v. Webster*, 12 Ch. D. 774, was that matters under this Order should be settled without the action going any further or being ever heard of again, and he said that it had proved itself most useful. Of course if there was a liability to account which was asserted to exist under a certain document, and the question of the existence of such liability to account was the point which the defendant desired to take, he would raise it as a preliminary question under this Order.

What defendant does after appearing to writ for account.

O. 15, r. 1.

He may also have to consider after appearing to almost any writ whether there is no one, not already a party to the action against whom he claims relief over. If so, leave must be obtained to bring him in by notice. This may be sometimes done on an *ex parte* application, supported by an affidavit showing the nature of the case. See, however, pp. 71 and 78.

Third party brought in by defendant.

Under the old Order 16, rules 13, 16, 17, the Court upon being satisfied that there is a bona fide claim raised by third parties could, upon the application either of the plaintiff or the defendant, add the names of such persons as parties, in order effectually and completely to adjudicate upon and settle all questions involved in the action. This application was refused in *Harry v. Davey*, 2 Ch. D. 721, because no question had arisen which required the persons whom it was attempted to join to be added as parties. This subject has, however, been treated of in the chapter upon "Third Parties."

Plaintiff
must not
be embar-
rassed.

Plaintiffs must not be harrassed by the defendant forcing them to include in their actions persons against whom they do not desire to proceed, and against whom they have no claim. The rule must be construed strictly, and a man must not be made a defendant merely for the convenience of another defendant. Denman, J., says, in *Norris v. Beazley*, 2 C. P. D. 85, where this matter is well threshed out, "I am quite clear that the Court ought not to bring in any person as defendant against whom the plaintiff does not desire to proceed, unless a very strong case is made out, showing that in this particular case justice cannot be done without his being brought in. The theory however is that all parties against whom remedy or relief is sought should if possible be joined in the same action."

If however the writ is not endorsed with a claim for an account and the defendant does not desire to bring into the action any other party, he will after appearing probably wait for the delivery of the statement of claim in actions other than those in

See p. 112. columns 1 and 2 of the table which accompanies.

When no
claim re-
quired.

He may however should he desire to do so give notice to the plaintiff that he dispenses with the delivery of a statement of claim. In such a case he need not deliver a defence, and this would be an instance of an action without pleadings: *Hooper v. Giles*, W. N. 1876, 10.

Particu-
lars.

An application for particulars of the plaintiff's claim may still under, O. 19, r. 7, sometimes be made by the defendant with advantage: *Augustinus v. Nerinckx*, 16 Ch. D. 13; *The Rory*, 9 P. D. 117; *Godden v. Corsten*, 5 C. P. D. 17; but in hardly any

case could an interlocutory application as for a receiver or injunction be well made by the defendant in the plaintiff's action. If however an action were brought upon partnership articles, for example, which contained a provision for a reference to arbitration a summons might be taken out to enforce it by the defendant. See also *Sargant v. Read*, 1 Ch. D. 600, and the observations upon Receivers further on in this book. Where arbitration compulsory.

As to when the Court has a discretion as to the costs of an action after payment into Court by the defendant, see *Nichols v. Evans*, 22 Ch. D. 611. Payment into Court

As to interim order for the preservation of property, see **Order 50**, r. 1, and *Rupell v. Davies*, W. N. 1883, 109. Interim order.

And as to orders as to perishable goods, &c., **Order 50**, r. 2, a horse was ordered to be sold: *Bartholomew v. Freeman*, 3 C. P. D. 316.

As to orders for inspection, see **Order 50**, r. 3, and as to the costs of such inspection *Mitchell v. Darley* For inspection. *Main Colliery Company*, 10 A. B. D., 457.

PROCEDURE IN DEFAULT OF APPEARANCE.

Writ Specially Endorsed. Order 3, rule 6.	Writ for Liquidated Demand not Specially Endorsed. Order 3, rule 7.	For Damages. Detention. Order 13, rule 6.	IN CHANCERY.		For Recovery of Land. Order 13, rule 7.
			Actions. Order 13, rule 9.	For Account. Order 3, rule 8.	
<p>Final judgment for sum not exceeding sum endorsed on writ, and interest at rate specified to date of judgment, and sum for costs.</p> <p>See Order 13.</p>	<p>AFFIDAVIT</p> <p>No statement of claim need be delivered.</p> <p>Statement of particulars of claim.</p> <p>After 8 days from filing particulars, Final judgment for amount shown thereby if not more than claim on writ.</p> <p>Costs to be taxed.</p> <p>Whether plaintiff would get costs of statement of claim?</p>	<p>OF SERVICE, OR OF</p> <p>No statement of claim.</p> <p>Interlocutory judgment.</p> <p>Writ of inquiry to assess value of goods and damages in respect of causes of action disclosed by writ.</p> <p>Court may direct that value and amount be otherwise ascertained.</p>	<p>NOTICE IN LIEU OF</p> <p>Statement of claim to be filed and delivered: <i>Min-ton v. Metcalfe</i>, 46 L. J. Ch. 584.</p> <p>Notice of motion for judgment in default of pleading to be filed.</p>	<p>SERVICE.</p> <p>Affidavit of merits of application.</p> <p>Summons under Order 15 for account at once and usual directions.</p>	<p>Without mesne profits, &c.</p> <p>Final judgment that person named in writ shall recover possession.</p> <p>With mesne profits, &c.</p> <p>If amount to be ascertained as in col. 3.</p> <p>If amount ascertained as in col. 1.</p>
1	2	3	4	5	6

CHAPTER VII.

PLEADING.

THIS chapter deals primarily with pleading under the Judicature Acts; under which if the defendant does not upon his appearance state that he does not require a defence, the plaintiff shall within six weeks after appearance deliver a statement of his complaint and of the relief or remedy to which he claims to be entitled: **Order 19, r. 2.** This must be as brief as the nature of the case admits of, and the costs of unnecessary prolixity have to be borne by the party chargeable with the same: **rule 5.** **Rule 4** says that every pleading shall contain and contain only a statement in a summary form of the material parts on which the party pleading relies, i.e., any facts which the party pleading is entitled to prove at the trial: Lord Selborne, C., in *Millington v. Loring*, 6 Q. B. D. 194; but not the evidence by which they are to be proved. A party ought not to be allowed to prove at the trial as a fact upon which he would have to rely to prove his case any fact which is not stated in his pleading: Brett, L.J., *Philipps v. Philipps*, 4 Q. B. D. 143; 48 L. J. Q. B. 138. **O. 20, r. 6**, orders every statement of claim to state specifically the relief which the plaintiff claims either simply or in the alternative, although it may also ask for general relief. Admissions and presumptions of law in the pleader's favour are not to be pleaded,

Time for
delivery of
statement
of claim.

C. 19.

Concise-
ness neces-
sary.

Facts re-
lied on
should be
stated to
be prove-
able at
trial.

Relief
claimed to
be speci-
fied.

Admis-
sions and
presump-

tions
law.

and it is sufficient to state the effect of documents as briefly as possible and not to set out the whole or any part of them unless the precise words are material; and nothing need be stated which the Court takes notice of judicially, as the law of England and the general law of nations; but private Acts of Parliament and the laws of foreign countries must be alleged like other facts.

Prolixity,
how dealt
with.

With reference to prolixity, the suppression of which seems especially aimed at by the Judicature Acts, it can be punished by the disallowance of costs under rule 2; or a pleading violating the rules with reference to it may be struck out as embarrassing under **Order 19, r. 27.**

For nothing is more embarrassing to a defendant than a number of statements which may be irrelevant, and with which therefore he cannot know what to do. They mystify him as to the case which he has to meet; and if any of them consist of facts which are really evidence and nothing more they are premature; for the defendant has to make up his mind what facts he will traverse, and until he has done so it cannot be known of what facts evidence will be required.

*Davy v.
Garrett.*

James, L.J., in *Davy v. Garrett*, 7 Ch. D. 486, says that the Court ought to be strict, even to severity, in taking care to prevent pleadings from degenerating into the old oppressive pleadings of the Court of Chancery; and although he stated that he had always set his face against appeals from the discretion of the Court below on matters of procedure, he overruled the judge of first instance in that case

and ordered the statement of claim to be struck out as being embarrassing on account of its prolixity.

On the other hand, the defendant should know what the plaintiff intends to prove at the trial and the judge may adjourn the case if anything material is unexpectedly sprung upon him: Lindley, J., *Millington v. Loring*, 6 Q. B. D. 194; and for this purpose as a general principle, each party should deal with the other by putting in their respective pleadings everything necessary to constitute the cause of action or defence; and in many cases it is open to no inconvenience that the party should do more; for example, in an action of trespass, state what he intends to rely on by way of aggravation of damage. It must be carefully noticed that in order that matter in a pleading may be struck out, it must tend to prejudice embarrass or delay the fair trial of the action; and as the judge directs the jury even at a jury trial, they will not be misled by the opening of the pleadings more than by the opening speech of counsel. If the pleading errs merely on the ground of too great length the costs of it can be disallowed under Order 19, r. 5; and therefore this alone will not entitle the defendant to proceed under the present O. 19, r. 27, to get it amended; for the allegation of facts in pleadings that can be given in evidence at the trial cannot tend to embarrass the defendant, and the mere fact that matters state a scandalous fact does not make them scandalous within the meaning of that rule: see judgment of Brett, L.J., in *Millington v. Loring*, quoted above.

What every pleading should contain.

What will get matter in a pleading struck out.

Length of pleadings, costs.

The object of modern pleadings is to narrow the issues between the parties and so save the expense

Object of pleadings now.

of bringing witnesses to prove what is admitted. But in the old technical days, when the letter of the law did not seldom kill, the declaration was a series of nooses thrown at the defendant, one of which might catch him; and so under the old system also all matters stated might have been put in issue by pleading the general issue. This would have had the effect of traversing each particular allegation. Thus issues were raised, it is true, but too many to be of practical use, and the real points relied upon by either party were not made clear as they are by the new system, which compels each allegation to be dealt with separately. Now, however, it must be observed that where the Judicature Acts have not laid down anything to the contrary, the old law prevails: *Evans v. Buck*, 4 Ch. D. 434; but things in aggravation of damage like seduction, which could not before the Judicature Act be pleaded in an action for breach of promise of marriage, now may: Brett, L.J., in *Millington v. Loring*. And in a libel case a claim was allowed to be demurred to where the defamatory words used were not set out: *Harris v. Warre*, 4 C. P. D. 125; and in a claim for negligence the material facts relied on should also certainly be set out. In fact every point upon which a party means to rely that can be inserted in the pleadings should be stated then, or else evidence of it may be inadmissible at the trial. For instance, in an action for libelling a plaintiff respecting misconduct in his profession, the defence alleged was that the libel was true. Evidence of general misconduct in his profession could not be adduced by the defence at the trial, as such misconduct had not been charged in the statement of defence: *Scott v. Sampson*, 8 Q. B. D. 491.

Old style.

Things in
aggrava-
tion of
damage
now plead-
able.

O. 19, r. 21.

All points
must be
pleaded.

Again, it is not sufficient in an action for libel to deny generally that the defendant wrote or published the same falsely or maliciously. The defence must set out the facts which show the justification or privilege he relies on: *Belt v. Lawes*, 51 L. J. Q. B. 359.

In actions for the recovery of land, not only the material facts but also the nature of the deeds upon which the plaintiff relies to prove his title must be set out: *Phillips v. Phillips*, 4 Q. B. D. 127. But a defence simply alleging that the defendant is in possession operates as a denial of the plaintiff's title, and requires him to prove the truth of the allegations in his claim. *Danford v. McAnulty*, W. N. 1883, 107. The relief or remedy claimed (**Order 19**) should also be set out both in the writ and also in the statement of claim; but in a claim of debt or damages the amount of the claim is not restricted by the endorsement of the debt on the writ.

With regard to amendments a new case must not be raised. But the case of *Laird v. Briggs*, 19 Ch. D. 22, shows that what at first sight appears to be a new case may not be so in reality. There a defendant denied the plaintiff's title, alleging that he neither was nor had been in possession, "save subject to the right of the defendant." The defendant here was allowed on appeal to amend by withdrawing the admission, it being held that this amendment did not raise a new case.

When leave to amend is given to a party, the other side should see that there is inserted in the order to save a fresh summons, that all amendments rendered necessary by such leave may be made in his own pleadings.

Extension of time for the delivery of a pleading—Time. which is generally obtained by consent in writing

When
action dis-
missed.

Order 64,
r. 8.

from the other side: **Order 64, r. 8**—may be ordered at any time before an action is actually dismissed for want of prosecution, although the application is not made until after the time allowed has expired. It will be granted in a proper case, even upon a defendant's application to dismiss for want of prosecution: *Higginbottom v. Aynsley*, 3 Ch. D. 288; but not after an action has been dismissed: *King v. Davenport*, 4 Q. B. D. 402. The order dismissing the action must be first reversed. An application for this purpose may be made even when it is too late to appeal the order dismissing the action under **Order 64, r. 8**, which gives the Court power to enlarge the time fixed by any order: see *Carter v. Stubbs*, 6 Q. B. D. 116. It may be more convenient to deal with the various pleadings separately after these few observations upon pleading generally; although much that will be said upon any one of them will no doubt apply to other forms as well.

Claim.

Material
facts.

The names and addresses of the parties to an action with a description of each of them, and in the case of a nobleman with his title of courtesy, form the first part of the statement of claim. Then follows a statement of the material facts of the case and these should be pleaded as concisely as possible, but if a right is relied on the facts which give rise to it must be set out.

The defence should never be anticipated after the fashion of the old pleadings in Chancery, for one among many other good reasons, namely, that this particular defence may never be raised.

The first part then of the body of the statement of claim is a concise statement of the facts showing some right of the plaintiff, and the second an averment that it has been violated by the defendant. Part 1 of
body of
statement
of claim.

For example, if the claim is for the breach of a simple contract the material provisions in the contract will be first set out, i.e., all those which the defendant has broken, and then the whole of the consideration for the contract follows. Then come averments as to the performance of all conditions precedent when necessary, and afterwards a statement that the defendant has committed a breach of the contract. This should be stated as broadly as possible, and then any particular breach can follow as an addition but not as a limitation of the general breach first alleged. Then follows a claim for the largest amount of debt and damages likely to be recovered. Aver-
ments.

Breaches
alleged.

Relief.

Between a claim of tort and contract there is a difference in this respect, that in the latter only nominal damages are generally recoverable unless the loss can be specifically stated and valued, except perhaps in the action for breach of promise. In tort however the circumstances under which the wrong was done may aggravate the damage in any case. Damages.

The reasons for the present rules of pleading are given by Bramwell, L.J., in *Phillipps v. Phillipps*, 4 Q. B. D. 143. They are that the plaintiff may be bound by his statement of facts and may not spring a new case on the defendant; that the defendant may be able to demur if the plaintiff's statement is not sufficient in law to show a cause of action against Reasons
for present
form of
pleadings.

him, in which case the action is summarily brought to an end; and thirdly, the defendant can single out the statements in the claim and answer one or more of them; in short that the issues may be as much as possible narrowed between the disputants.

Evidence. The rules as to when evidence may be pleaded were clearly explained by Brett, J., in *Blake v. Albion Insurance Co.*, 24 W. R. 677. He said: "In every case some facts must be proved, others are merely evidence of facts which must be proved, others again are within both descriptions. Those which are to be proved, or which are both to be proved and are also evidence of other facts, may be pleaded; but if they are only evidence of facts to be proved, they are mere evidence and cannot be pleaded." Presumptions of law in the pleader's favour should not be pleaded; nor inferences and conclusions of law; in other words, there should be no charging parts, and the plaintiff need not state under what particular form of action he is proceeding nor in what exact legal position he claims to stand to the defendant; but if he makes alternative or separate claims he must keep them distinct.

**Embar-
rassment.** No statement of claim must embarrass the defendant, though what may reasonably be said to embarrass him it is not easy to say. A pleading may be embarrassing from prolixity alone, if carried to an extreme degree, but not unless: *Heap v. Morris*, 2 Q. B. D. 630; and still more so if coupled with statements of evidence and if it contains alternative claims to relief mixed up together: Thesiger, L.J., in *Davy v. Garrett*, 7 Ch. D. 486. A good instance of alternative claims kept properly distinct is that under the

head "Agent," being No. 5 in Appendix C. (J. A.) See also *Child v. Stenning*, 7 Ch. D. 413. Moreover Rule 1 expressly orders the separation of distinct claims.

A late instance of an embarrassing claim which Instance. was ordered to be amended was *Harris v. Jenkins* (Fry, J.), 22 Ch. D. 481. This was an action to restrain the obstruction of an alleged private right of way. It was held that in such an action the plaintiff ought to show in his statement of claim whether he claims the right by prescription or by grant. Also that he ought to allege with reasonable certainty the extreme boundaries of the right of way and its course. If these things are omitted the claim is embarrassing, even under the New Rules.

The principle therefore seems to be, that the plaintiff must not be inconsistent and must do nothing which may be a stumbling-block to the defendant; an instance of which is, that if he wants to set up fraud at the hearing he must allege it in his pleadings distinctly and specifically: *Mozley v. Cowie*, 47 L. J. Ch. 271; but all that his pleadings absolutely need show, if no harm is done to the defendant by embarrassing him, is some cause of action or other not even charged (though several others are, if they are only kept distinct) either in law or equity—in fact, that he is entitled to some relief, to satisfy the present rules of pleading. Allegations must be specific
O. 20, r. 7.

Order 27, r. 1, said that scandalous statements might be struck out on application to a judge; but Lord Coleridge, in *Blake v. Albion Life Assurance Co.*, appeared to think that in order to be struck out they should be irrelevant. See *Cashin v. Craddock*, Scandalous statements.
O. 19, r. 27.

Rhetoric. 3 Ch. D. 376. Rhetoric in a pleading is very bad, especially in a claim, as it leaves the impression, besides violating every idea that has been imbibed of modern pleading, that the case must be a bad one to require it before the other side have had their say. The object of pleading is to narrow the issues—to find out what facts the defendant admits—and therefore to leave fewer for the plaintiff, and indeed for the defendant, to prove. So it saves time and expense. Perhaps as common a fault as any in a claim is anticipating the defence; indeed, it used to be the rule in Chancery pleadings for the plaintiff to allege in his bill imaginary defences of the defendant, and to make anticipatory replies to them. Such defences may never be raised at all, and therefore a pleading which must necessarily be long may be in great part useless, if it contains answers to defences never raised.

Anticipating the defence.

Conditions precedent. It is the abuse of pleadings which has led to the talk of abolishing them, and the restrictions which have been actually placed upon them, and still more the interlocutory applications of which they have been the cause. Take the case of *Goddard v. The Law Property and Life Assurance Society*, commented on at p. 153 in the Law Journal of March 18, 1882. There the plaintiff had inserted in his claim the old form stating the performance of all conditions precedent. The defendant denied the paragraph generally. The plaintiff then took out a summons to strike out the denial as embarrassing and contrary to the rules of pleading under the Judicature Acts. Mr. Justice North said that he thought the paragraph a breach of Order 19, r. 18, and it would be now of r. 14, which requires a pleader to state facts, and that to allege generally a performance of conditions prece-

dent is not to allege facts, and refused to strike out the defendant's denial of it, as he might have treated the paragraph as if it had never been pleaded at all. See also the note to Conditions Precedent in *Bullen & Leake*, 4th ed., p. 158.

As to matter which has arisen since the issue of the writ in an action, abuse in pleadings has also crept in. In *Beddall v. Maitland*, 50 L. J. Ch. 401, Fry, J., held that a counterclaim could be brought in respect of a cause of action which had arisen after the issue of the writ; and the Queen's Bench Division, in *Toke v. Andrews*, 8 Q. B. D. 428, allowed a counterclaim by the plaintiff in respect of matters arising after the date of the writ at the same time and out of the same transaction as the statement of defence and counterclaim of the defendant.

The plaintiff might without leave amend his claim once before reply under Order 27, r. 2; and the Court could under rule 1 allow at any stage of the proceedings an amendment; but an amendment in order to raise a new issue for the purpose of costs might not be allowed: *Webber v. Wedgwood*, Solrs. J., Feb. 24, 1883, p. 275.

From these remarks it will be seen that pleadings under the Judicature Acts were not as short or as speedy in their results as could be desired; and with reference to the allowance or reformation of them, the following remarks of Lord Coleridge, in *Ormerod v. Todmorden Mill Co.*, 8 Q. B. D. 673, are to be remembered. He says there that there are certain matters the determination of which has been committed to the discretion of the judge by the very words of the statute itself; and that there are certain general rules laid down as to the character of plead-

Matter arising since issue of writ.

Amendments.
O. 28, r. 2.

See O. 20, r. 4.

Uncertainty of interlocutory applications as to pleadings.

ings to which the judges have to enforce obedience. In so doing, from the very nature of the case and the infinite variety of the circumstances, the application of these rules must be infinitely varied. Applications therefore with reference to pleadings must not be made rashly, and certainly not without having counted the cost of them, now that the rules as to the form and style of them are so much relaxed.

Defence.

Much of what has been said as to the form of pleading that should be used in statements of claim applies also to defences; as for instance, that mere evidence or conclusions of law should not be pleaded, and that they should not be prolix rhetorical or embarrassing. But perhaps the most general fault into which defences used to fall was that of evasiveness.

Evasive-
ness.

Order 19, r. 9, says that a defendant, relying upon several distinct grounds of defence set-off or counter-claim, founded upon separate and distinct facts, must keep them distinct; and rule 13, that every allegation of fact in any pleading in an action, not being a petition or summons, if not denied (1) specifically, or (2) by necessary implication, or (3) stated to be not admitted in the pleadings of the opposite party, shall be taken to be admitted, except against an infant, lunatic, or person of unsound mind not so found by inquisition. See *Harris v. Gamble*, 7 Ch. D., 877, and p. 55.

Punish-
ment of.

The effect of these rules and of the practice which has obtained under the Judicature Acts with reference to statements of defence, has been to make an

evasive denial equivalent to an admission. In *Tildesley v. Harper*, 7 Ch. D. 403, an action against a lessee to set aside a lease granted under a power, the claim stated that the donee of the power had received from the lessee a certain sum as a bribe, stating the circumstances. The defence denied that that sum had been given, and denied each circumstance, but contained no general denial of a bribe having been given. It was held that the acceptance of the bribe must be taken to have been admitted.

Leave to amend the defence will still be refused where there has been mala fides, or the other side cannot be restored to his former or an equally good position. Amendments, where not allowed.

If a plaintiff states that such and such a sum was paid or alleges a fact with certain circumstances, it is not enough for the defendant to deny by saying that such and such a sum was not paid, or that the fact did not happen with the alleged circumstances. He should plead that neither such and such a sum nor any sum was paid, and should substantially deny the fact alleged, in order not to be evasive: Order 19, r. 22. This rule says that he must deny that he received the alleged sum or any part thereof, or else set out how much he received. And so when a matter of fact is alleged with divers circumstances, it is not sufficient to deny it as alleged along with those circumstances, but a fair and substantial answer must be given. Denial must be specific.

The only general denial in use now is not guilty by statute. This is used when the claim is under certain statutes which expressly grant the privilege; and under it a special defence, which would other- Except not guilty by statute.

wise require to have been pleaded, can be set up. They relate mostly to public officers, prisons, persons sued on a penal statute, constables, and other such like subjects—a list of them is given, and the matter well explained in Andrews and Stoney's Judicature Acts, p. 144. See also Bullen & Leake, Precedents, vol. i., pp. 204 et seq. The defendant should in such case insert the words "by statute," adding the year, chapter and section on which he relies, stating whether it is public or not: R. G., T. T. 1853, R. 21. See O. 19, r. 12, which permits it only to be pleaded alone.

(General
denials
dis-
couraged.

If a defendant denies the representative capacity of the plaintiff or the legality of a contract, he must deny it specifically; for instance if he pleads the Statute of Frauds he must set out the facts which bring his case within it: *Pullen v. Snelus*, 48 L. J. Q. B. 394. In a word general denials are discouraged and can seldom be used safely. As an example, in a O. 21, r. 5. claim for specific performance the plaintiff stated that his predecessor in title by his agent lawfully authorised signed an agreement with H., the predecessor in title of the defendant. The defence denied this following the words of the claim, and then stated that H. his predecessor in title was of unsound mind and did not lawfully authorise anyone as his agent to sign an agreement. In another paragraph it was denied that any agreement was signed by H. or by Danger of. any person by him lawfully authorised. It was held on appeal that under this defence the defendant could only offer evidence to show that H. was of unsound mind, and not that the agent was not duly authorised: *Byrd v. Nunn*, 7 Ch. D. 284. The reason seems to be that the fact that there had been

no lawful authorisation of an agent was not stated as a fact, but only as a conclusion from the facts in issue, viz., the unsoundness of mind of H. Therefore that it was not a fact put in issue by the defendant.

The line of defence which a defendant proposes to take should still appear from his pleading, or it may be considered evasive in such a case as the following. The plaintiff sues the defendant for alleged infringement of copyright in a song. The defendant in his defence alleges that the song had not been registered at Stationers' Hall until December 9th, 1876, and adds, "The defendant denies that the song has been duly registered. The time of the first publication thereof is not truly entered on the register." The defendant was only allowed to offer evidence that the time of the first publication had been untruly entered, and not that the name of the publisher had been untruly stated. Fry, J., said in this case (*Collette v. Goode*, 7 Ch. D. 842): "Section 13 of the Copyright Act requires some six or eight matters—among them the date of the first publication and the name of the publisher—to be truly stated in the register, in order to make due registration; and if any one of them is false it will invalidate it. The defendant has alleged a false statement of only one of them. I hold that the point pleaded is the untrue statement of the date of first publication, and from that the defendant has stated a conclusion of law that the registration was undue." His lordship also refused to give leave to amend.

Line of
defence
should be
clear.

Instance
of where
leave to
amend
refused.
See O. 28.

In an action for dissolution of partnership, the plaintiff made various allegations in his claim, which the defendant dealt with in his defence by saying that he denied that the terms of the arrangement

between himself and the plaintiff were definitely agreed upon as alleged, and it was held that this denial was evasive.

Putting
plaintiff
to proof.

When a defendant by his defence simply puts the plaintiff to the proof of the several allegations in his claim he will be taken to have admitted them, and by Order 22, r. 4, if he denies, or does not admit what he ought to have admitted, he may be saddled by the Court with the extra costs so caused by him. This provision does not appear to have been as often acted upon as it might have been. The

See O. 32.

New Rules extend the powers of the Court in this respect.

Embar-
rassing
plaintiff.

Another way in which a defence may still offend is by being embarrassing; but in order to be so it must offend in ways similar to those pointed out under "Claim." For example, in an action to enforce a contract for the sale of a patent without warranty it is embarrassing if the defendant puts in issue the validity of the patent: *Liardet v. Hammond, &c.*, 31 W. R. 710. Again, the duty of the defendant is not only to deny what he desires to deny of the allegations of the plaintiff, but also to give his own version of the matter in dispute, so that the facts in dispute between him and the plaintiff may be the more easily seen. If matters of law which might have been raised on demurrer were pleaded, they

O. 19, r. 27.

might have been struck out as embarrassing, under Order 27, r. 1: *Stokes v. Grant*, 4 C. P. D. 25; but there a defence being in effect an equitable defence though very prolix was not struck out as embarrassing; for Grove, J., said that he could not think that it would prejudice the fair trial of the action. And here it may be observed that a pleading not only must not embarrass the opposite side in his

When
from pro-
lixity.

reply to it, but must not prejudice embarrass or delay the fair trial of the action—words which are of wider import. It has however been held that a defendant may deny the plaintiff's causes of action and at the same time plead payment into court in respect of the whole or any part of them, when a right to property is not claimed or character has not been assailed, or fraud charged by the defence: *Berdan v. Greenwood*, 3 Ex. D. 251; and in an action for libel an apology might be offered, money paid into court, and justification pleaded together: *Hawkesley v. Bradshaw*, 5 Q. B. D. 302. See O. 32.

If a defence could not be dealt with as embarrassing, under Order 27, r. 1, it might be treated as offending under Order 40, r. 11, and a motion made for an order on admissions of facts in the pleadings; and as the exercise of the power given by that rule to the Court was merely discretionary—*Mellor v. Sidebottom*, 25 W. R. 401—he could wait till the trial, and then object to evidence being adduced on any point not raised by the pleadings, as was done in *Byrd v. Nunn*, referred to before.

Ways of dealing with offending defences.

There were one or two terms used in connection with defences upon which a few words may be said here. Order 19, r. 13, says that no plea or defence shall be pleaded in abatement. This meant that the old practice of pleading that an action had abated when the plaintiff became bankrupt or died was abolished, and that his interest went to his representatives for the purpose of keeping it alive, under Order 50, r. 1: *Jackson v. North Eastern Ry. Co.*, 5 Ch. D. 844. This subject, as regards bankrupt parties, has been treated of before, under "Parties." See p. 56. A defendant was said to confess and avoid when he

Pleas in abatement.

O. 21, r. 20.

Confession
and avoid-
ance.

pleaded in his defence new facts which would if true render him not liable to the claim made against him by the plaintiff. Thus in *Hall v. Eve*, 4 Ch. D. 341, the plaintiff claimed specific performance of an agreement made between the defendants E. and W. of the one part and the defendant L. of the other part, whereby E. and W. agreed to grant a lease to L., and alleged that L. had transferred his interest under the said agreement to the plaintiff. The defence of E. and W. was by confession and avoidance; they pleaded that before the transfer of the agreement, L. had committed breaches which gave them a right to put an end to it. Such a plea was best dealt with in the reply, and not by amending the statement of claim.

Third
parties.

A defendant whilst not perhaps having a defence to the action as against the plaintiff, might yet have a claim over or right of indemnity against a third party, or might have a counterclaim against the plaintiff, or the plaintiff and a third party. The defendant's course in these cases is dealt with in the chapter on "Third Parties," and the new practice is set out in O. 16, Part VI.

See p. 70.

Costs.

If one of two co-defendants pays the costs of an action he cannot by an independent proceeding compel the other defendant to contribute a moiety: *Dearsley v. Middleweek*, 18 Ch. D. 236. Whether this is so in the case of a payment of money into court, *quære*. The Order as to payment of money into Court is O. 22.

Counterclaim.

A defendant can set-off or set up against the claims of the plaintiff any right or claim he may

have against the plaintiff, and this shall have the same effect as a claim in a cross-action: Order 19, **O. 19, r. 3** r. 3. The defendant is therefore by counterclaiming placed in the position of a plaintiff: *Stooke v. Taylor*, 5 Q. B. D. 569. And a defendant could move for judgment on his counterclaim against the plaintiff if no reply had been put in, and time was up; but the action must be set down on motion for judgment under O. 40, r. 1: *Carsti v. Hirst*, Solrs. J., June 30, 1883, p. 586.

And so an order is made under Judicature Act, 1873, s. 24, sub-s. 7, to stay one of two cross-actions between the same parties arising out of the same matter when all the questions intended to be raised in the action which is stayed can be raised by defence set-off and counterclaim: *Thomson v. South Eastern Ry. Co.*, 9 Q. B. D. 320. Order to stay.

The method introduced by the Judicature Act as to counterclaims is really only a new method of procedure substituted for the old one by way of cross-action. It does not confer any right against third parties which did not exist before. Kay, J., *In re Milan Tramways Co., Ex parte Theys*, 22 Ch. D. 122. Counter-claim substituted for cross-action.

It still exists in all cases provided only the counter-claim may be conveniently tried in the original action. This test of convenience will be further noticed hereafter.

If the counterclaim cannot be conveniently disposed of in the pending action, permission to retain it in the action may be refused. In the Chancery Division, an application that permission may be refused used to be made by motion: *Naylor v.* Inconvenience

Farrar, W. N. 1878, 187. It must be made before O. 21, r. 15. reply, and used to be made under Order 22, r. 9. As an example of inconvenience, a defendant must not set up by way of counterclaim against the claim of a plaintiff suing only in a distinct personal character claims against him personally and also as an executor: *Macdonald v. Carington*, 4 C. P. D. 28. Whether or not a counterclaim causes inconvenience is not a matter for the absolute discretion of the judge; for in a very strong case his decision will be overruled by the Court of Appeal: *Huggons v. Tweed*, 10 Ch. D. 359. And though a counterclaim is part of the original action, and when the action has been discontinued no further step can be taken in the counterclaim—*Varaseur v. Krupp*, overruled, see *McGowan and Another v. Middleton*, 1883, W. N. 75, 15 Ch. D. 474—yet the old idea that the relief claimed by it must relate to the specific subject-matter of the action is not a correct one. The late Master of the Rolls, in *Naylor v. Farrar*, would not allow a counterclaim, where it was quite unconnected with the action but was in fact a new demand and not a cross-claim; but the reason he refused to do so was because such a counterclaim could not be conveniently disposed of in the action. It is submitted that this is the true principle upon which counterclaims against the plaintiff alone are disallowed. Cf. *Besant v. Wood*, 12 Ch. D. 605.

Irrelevant. As a further instance in *Gray v. Webb*, 1882, W. N. 122, 21 Ch. D. 804, Kay, J., excused the counterclaim as irrelevant and tending to delay the trial of the action. There the plaintiff sued for the specific performance by the defendant of a contract to purchase land. The defendant in the counterclaim stated that the plaintiff owed him moneys which

ought to be set-off against the purchase money. See **O, 21. r. 16.**

On the other hand, it may be said that *Harris Contra. v. Gamble*, 6 Ch. D. 748, is an authority to the contrary.

It may perhaps be that the true rule, when a new party was made a defendant to a counterclaim, under Order 22, r. 5, and a defendant by his defence set up a counterclaim which raised questions between himself and the plaintiff along with any other person or persons, was that in *Padwick v. Scott*, 2 Ch. D. 736, viz., that the defendant must not bring a third party before the Court unless the relief claimed against him was connected with the subject-matter of the action; but as between the plaintiff and original defendant alone it can hardly be that the counterclaim need relate to the subject-matter of the action. It has been well remarked that in the case of a third party, who is defendant to a counterclaim, it would be hard if this were so, for "it would prevent a defendant in an action for goods sold and delivered from joining with the plaintiff in a counterclaim a person jointly liable with him to the defendant on a promissory note." Perhaps, however, Rule. ^{Counter-claim against plaintiff and third party.} there should be added, "for the price of the goods, or some of the goods, so sold and delivered;" for the line must be drawn somewhere, and it is hard to see why the original defendant should mix the original plaintiff up in his own action, upon no principle, with a person utterly unconnected with him.

General statements like those of Brett, L.J., in *Turner v. Hednesford Gas Co.*, 3 Ex. D. 145, are elied on no doubt. "The construction put by us on

these orders, which are aimed against multiplicity of suits, should be as wide as possible." But before general statements are allowed to have weight in other cases than those in which they were made, it must be seen that the circumstances of the case in which they were made are similar to those of that to which it is intended to apply them; so let us look at the facts of that case. The claim was for damages for preventing the plaintiff from completing work pursuant to a contract with the defendants. The defence was that the defendants had power under the contract to take the work out of the plaintiff's hands if he failed to do it well, and that he did fail to do it well; and the counterclaim was, that through the failure of the plaintiff they had had to expend £256 more than they would have had to expend, had the plaintiff fulfilled his agreement; and against R., as having by a general bond bound himself in the sum of £200 for the proper execution of the work by the plaintiff. The counterclaim against R. was allowed. In this case it is easy to see that the counterclaim against R. was connected with the subject-matter of the action, and that if it could be tried out in it, a multiplicity of suits would be saved and no injustice done to the plaintiff thereby.

*Dear v.
Sworder.*

In *Dear v. Sworder*, 4 Ch. D. 476, it was held in effect that where there was a question between the defendant and plaintiff along with another person, which the defendant was entitled to raise by cross-action, the other person could be made a defendant to a counterclaim. *Hodson v. Mochi*, 8 Ch. D. 569, illustrates this. Thus, to an action against a woman to enforce a debt against her separate estate, her husband was joined as a co-defendant. He was

allowed to counterclaim for the restitution of four pictures of his retained by the plaintiff against the claim in respect of his wife. Here if the four pictures had not been retained as security as it were for the subject-matter of the claim, it is thought that the husband would not have been allowed to set up what would then have been a wholly independent claim by way of counterclaim in the plaintiff's action.

In *Child v. Stenning*, 5 Ch. D. 695, it was further held on appeal that a claim might be amended to claim alternative relief against one defendant which was not consistent with that claimed against the other; and it is submitted, notwithstanding *Evans v. Buck*, 0 28. 4 Ch. D. 432, that a person can be now joined as defendant to a counterclaim against whom there is a claim for relief in one of two inconsistent alternatives, provided the counterclaim against them both is closely connected with the subject-matter of the action, and provided (a thing which is in every case of counterclaim essential) it can be conveniently disposed of in the action, which it is very likely it cannot. A reason why this view would seem to be the correct one is, that in *The Manchester, Sheffield and Lincolnshire Ry. Co. and London and North Western Ry. Co. v. Brooks*, 2 Ex. D. 243, it was held that separate counterclaims could be set up against each of the plaintiffs, and it would not appear that it makes any matter whether these separate counterclaims are set up against parties who were originally plaintiffs, or against the original plaintiff and a new party who has been allowed to be added as a fresh defendant to the counterclaim.

And if separate counterclaims can be set up

against separate defendants to them, it is hard to see why a person cannot be joined as a defendant to a counterclaim against whom there is a claim for relief in one only of two inconsistent alternatives provided only that the restrictions which have been before stated are observed.

Damages
claimed by
counter-
claim.
Date.

Several important extensions of the privileges of counterclaims have been granted of late. Perhaps the greatest is, that now, damages claimed by counterclaim need not be limited to the date when the writ was issued. Here, *The Original Hartlepool Collieries Co. v. Gill*, 5 Ch. D. 713, must be taken to be overruled by *Beddall v. Maitland*, 17 Ch. D. 174.

Further the allegations in a counterclaim must be specifically dealt with, and not joined issue upon generally: *Benbow v. Low*, 13 Ch. D. 553, overruling *Rolfe v. Maclaren*, 3 Ch. D. 106; as this may amount only to an admission of all the statements alleged by way of counterclaim. Leave to amend was however given in *Green v. Serin*, 13 Ch. D. 589.

Counter-
claim and
defence
now one
pleading.

See O. 21,
r. 10.

Again the same case as well as *Lees v. Patterson*, 7 Ch. D. 866, shows that the rule in *Crowe v. Barnicot*, 6 Ch. D. 753, is not insisted upon. The head-note to that case states that a counterclaim must contain in itself a specific statement of the facts upon which reliance is placed for the relief claimed, and that it is not sufficient that the facts relied upon appear in the statement of defence, even though that and the counterclaim form one continuous document. A counterclaim in that case which was defective in this respect was dismissed with costs, and leave to amend refused by Fry, J. From *Lees v.*

Patterson it would appear also that it is not absolutely necessary that the paragraphs in a defence and counterclaim should be numbered consecutively, or indeed that the counterclaim should be headed separately. Cf. O. 19, r. 9.

Again the question whether a counterclaim shall be excluded or not is not so absolutely in the discretion of a judge that it cannot be appealed from ; but the Court of Appeal will not interfere, except in a very strong case : *Huggons v. Tweed*, 10 Ch. D. 259, quoted above. But on the other hand, the persons who can counterclaim and be counter-claimed against are now limited to those interested in the subect-matter of the original action ; and a defendant cannot counterclaim against a third party alone, but he must join the plaintiff as a co-defendant to the counterclaim ; for, although claims between co-defendants can be made under Order 16, r. 17, they are not counterclaims under Order 22, r. 5 : *Furness v. Booth*, 4 Ch. D. 586 ; *Shephard v. Beane*, 2 Ch. D. 223, not followed. And a person named in a defence as a party to a counterclaim thereby made, cannot counterclaim against the original defendant : *Street v. Gover*, 2 Q. B. D. 498. In the case of a counterclaim against a new party he cannot enter an appearance till served with a copy of the defence. See p. 150.

See O. 21,
r. 15

Defendant
cannot
counter-
claim
against
third party
alone.

Street v.
Gover.

It has however been since judicially remarked that it may be open to question whether in that case a somewhat too narrow construction was not put upon the intentions of the Judicature Act. The decision turned only upon the construction to be placed upon Order 20, r. 8, and Lush, L.J., appears even then to have entertained doubts.

*Toke v.
Andrews.*

But the original plaintiff if he claims relief can counterclaim against the original defendant by way of set-off and counterclaim to the counterclaim set up against him by the defendant, even in respect of matters arising after the date of the writ: *Toke v. Andrews*, before Field, J., and Huddleston, B., 8 Q. B. D. 428. This case is the authority that the plaintiff may counterclaim in his reply to the counterclaim of the defendant, in respect of a cause of action which has accrued after the issue of the writ, but which has arisen at the same time and out of the same transaction as the defendant's counterclaim.

Reason.

The reason is that judgment to be fair cannot rest upon the allegations in the defendant's counterclaim without taking into account the cross-rights of the plaintiff arising out of (for instance) the same contract, and at the same moment of time upon and at which the defendant's claims have their foundation.

**Puis dar-
rein con-
tinuance.**

The whole subject of pleas puis darrein continuance is also treated of in *Toke v. Andrews*.

**Plaintiff
must not**

If the plaintiff contends that the claim raised by the counterclaim should be disposed of by an independent action, he may apply to the Court to exclude it. Then such order as shall be just may be made, and leave to amend is in fact often given. The principle in almost all cases seems to be that the plaintiff must not be embarrassed in the conduct of his own action. A late instance of a strong case in which the Court was of opinion that the plaintiff would not be delayed was *In re Holmes*, W. N. 1883, 110. An application could also be made under Order 36, r. 6, that the issue raised by the

counterclaim might be tried before the plaintiff's issues. This used to be done only in very exceptional cases, and terms might be imposed: *Emma Silver Mining Co. v. Grant*, 11 Ch. D. 918; but where a defendant in a partnership action set up by counterclaim an agreement by the plaintiff for the sale to the defendant of his (the plaintiff's) interest in the partnership at a stated price, upon an application by the defendant that this issue should be tried first, it was refused: *Piercy v. Young*, 15 Ch. D. 475; and as the Court of Appeal refused to interfere with the discretion of the Court below which declined to try the liability of a surety before that of the principal in *Tasmanian Railway Co. v. Clark*, W. N. 1879, 106, it is submitted that this is a question entirely in the discretion of the Court, and that the Court of Appeal will not interfere, as in the question of the exclusion of a counterclaim, except in a very strong case.

When counterclaim tried before claim.

In discretion of Court.

As to the form of judgment when the plaintiff succeeds on his claim, and the defendant on his counterclaim, see *Lowe v. Holme*, 10 Q. B. D. 286, and as to the apportionment of costs in such a case, *In re Brown, Ward v. Moore*, Solrs. J., 24 Feb., 1883, p. 278.

The same rules of pleading as to conciseness and distinctness which apply to a claim apply to every other pleading, and especially to a counterclaim as to prolixity and distinctness.

The new rules expressly provide that a counterclaim does not drop with the plaintiff's action, but may continue alone.

To avoid multiplicity of suits and to carry out the spirit of the Judicature Acts if pleadings are ever

abolished, the place of counterclaims must be taken by notices of special defence. This can only be done imperfectly. And it is much better that they become under the new rules more what they ought always to have been, viz., "consisting mainly of allegations of facts so as to be in the spirit of the Judicature Acts." The cases, therefore, that have been cited with reference to pleading under the Judicature Acts will for the most part apply to pleading under the new system.

Reply.

New
matter in
defence.

p. 138.

Allega-
tions in
counter-

But two or three special remarks need be offered upon this pleading, which unfortunately is not abolished. When the defendant practically denies the claim, all that need be done is to join issue. If he pleads new matter or counterclaims, then it is better to deal with this in the reply than to amend the statement of claim. *Hall v. Eve*, 4 Ch. D. 341, decided that a plaintiff could reply by traverse or confession and avoidance, or both combined. The reply must not however set up new claims, and certainly not any more than any other pleading plead evidence argument or state conclusions of law to be inferred from the facts pleaded. The plaintiff might introduce new matter by way of set-off or counterclaim to the defence, or to controvert the statements in it if within a reasonable compass, and in a reasonable manner: *Williamson v. London & North Western Ry. Co.*, 12 Ch. D. 787; see also *Toke v. Andrews*, quoted above. Where the defendant has set up no counterclaim the facts which it is desired to traverse in the defence need not be dealt with one by one; but where there is a counterclaim, the allegations in it must be specifically

dealt with, and the plaintiff must not reply by merely joining issue: *Benbow v. Low*, 13 Ch. D. 553. If however the defendant does not state any facts in support of his counterclaim it will generally be sufficient to join issue upon it. This is not likely to occur as facts should be pleaded in support of any claim: *Hillman v. Mayhew*, 24 W. R. 485; see also *Rolfe v. Maclaren*, 3 Ch. D. 106. The reply must be delivered within three weeks, and no pleading subsequent to it except a joinder of issue, can be pleaded without leave; and if leave is given four days only is allowed without special leave as to time within which to do so; and upon joinder of issue the pleadings are closed.

claim to be dealt with specifically. Where no facts pleaded in counter-claim.

Time.

The plaintiff might amend his claim, and the defendant his counterclaim, once without leave, but an application may be made to the Court to disallow such amendment. *Boddy v. Wall*, 7 Ch. D. 164, shows that when a plaintiff has amended his claim after the delivery of the defence, the defendant could obtain leave to amend his defence or put in a new defence, or go on with his old one. If he did the latter however he would be taken to have admitted the amendments in the claim. Leave to amend was given by the Court of Appeal in *Tildesley v. Harper*, and will generally be given unless it works some injustice: *Tildesley v. Harper*, 10 Ch. D. 393; but a pleading whenever amended must be marked as such, and this must be done within fourteen days unless a longer time is allowed. It will be noticed, that the defendant cannot amend his defence even once without leave, nor the plaintiff his reply. Amendments have been very frequent of late, and if they are allowed to continue so it is conjectured that

Amendments.

See O. 28.

Pleadings amended to be marked "Amended."

they may have to be made upon the terms of the party who causes them—at all events, at all unnecessarily—paying the costs caused by his so doing. See O. 65. Leave to amend was given by Fry, J., at the hearing in *Green v. Serin*, 13 Ch. D. 589, on the ground that there had been no surprise. Where no surprise.

The following cases should be especially noticed.

Reply
after time
when
good.

A reply though delivered after time is a good one unless the Act says it shall not be so. It may always be delivered on terms. In *Lumsden v. Winter*, 8 Q. B. D. 650, no reply was delivered, and therefore judgment was entered for the defendant; but when a reply has been actually delivered it cannot. In *Graves v. Terry*, 9 Q. B. D. 170, where the reply had been actually delivered before notice of motion for judgment upon admissions of fact in the pleadings, the motion was refused. Indeed an enlargement of time for the delivery of a pleading ought to be granted as a rule; even though the opposite party has moved for judgment on admissions or to dismiss for want of prosecution. It is simply a question of terms, and the applicant will generally have to pay the costs of the application, unless indeed there has been excessive delay or other personal inconvenience: *Eaton v. Storer*, (C.A.) 22 Ch. D. 91, 31 W. R. 488.

Time
generally
granted.

Peremp-
tory Order.

A Peremptory Order is treated as a final indulgence, except under the most exceptional circumstances, as for instance the death of a party: *Holdcroft v. Lowndes*, Solrs. J., March 3, 1883, p. 296.

CHAPTER VIII.

SERVICE.

THE rule has always been that the defendant should be served personally with a true copy of the writ of summons for the commencement of an action. Under certain circumstances however the Courts have allowed the plaintiff to proceed as if personal service had been effected; and before the Judicature Acts substituted service was constantly permitted in the Court of Chancery.

No service of a writ is required where the defendant's solicitor agrees to accept service. This agreement must be a written one, and in the form of an undertaking to appear for the defendant. A solicitor not fulfilling such an undertaking is liable to attachment, or an order may be obtained calling upon him to enter an appearance in pursuance of his undertaking.

Where defendant's solicitor accepts service.

Penalty for non-appearance.

Personal service of a writ of summons is effected by tendering or delivering to the defendant a true copy of the writ with the endorsements thereon. The original writ need not be shown unless the defendant asks to see it at the time of or immediately after the service.

Mode of personal service.

Husband and wife. Order 9 is the Order which provides for the service of the writ on particular persons and in particular actions. Now when husband and wife are both defendants, service on the husband is not good service on the wife. **O. 9, r. 3.** When the defendant's husband could not be found, the judge of the Probate Division ordered that substituted service upon the husband should be effected by advertisement. If the husband is abroad and cannot be served, and the subject-matter of the suit arises in right of the wife, the plaintiff may obtain on ex parte motion supported by affidavit an order that service upon the wife alone in the usual manner shall be sufficient.

Infants. Service on an infant's father or guardian or if none upon the person with whom the infant resides or under whose care he is, is good service on the infant, unless the Court otherwise orders. **O. 9, r. 4.**

Lunatics. Service on the committee of a lunatic, or the person with whom a person of unsound mind resides, or under whose care he is, unless the Court otherwise orders, is good service. See *Thurn v. Smith*, 27 W. R. 617.

Partners. Partners may be sued in the name of their firm, and then service on one or more of such partners or at the principal place (within the jurisdiction) of the partnership business upon the manager of such business, is good service upon the firm; and when one person carries on business in the name of a firm apparently consisting of more than one person, and is sued in the firm's name, service may be effected in like manner on the manager of the defendant's business. This rule does not apply to an action brought under the Summary Procedure on Bills of Exchange

Act, which has not been reintroduced. In order to make judgment in an action binding on any member of a firm which has been dissolved before the issue of a writ, it would seem that he must have been served with the writ as a partner, and that service of the writ on one of the former partners is not good service on him. This was the opinion of the majority of the Court of Appeal in *Ex parte Young, In re Young*, 19 Ch. D. 125, but Brett, L.J., dissented. The subject of partners as parties to an action has been treated of in the chapter on "Parties." And see O. 16, r. 14.

It has been held that the old rule enabled a plaintiff to effectually serve a defendant who was resident out of the jurisdiction, and carried on business in London as "Clason & Company," by serving the writ upon the manager of his London house. And see O. 9, r. 6.

Foreigners residing out of the jurisdiction should not be served with the writ, but with notice that the writ is issued, such notice being endorsed with the addresses of parties, &c., in the same manner as a writ; but British subjects should be served with the writ. *Padley v. Camphausen*, 10 Ch. D. 550. See O. 11.

The statutes 7 Wm. IV. and 1 Vict. c. 73, s. 26; the Companies' Clauses Consolidation Act, 1845, s. 135; the Lands Clauses Consolidation Act, s. 134; the Railways Clauses Consolidation Acts, s. 138, and the Companies Act, 1862, prescribe the mode in which companies chartered or incorporated under the Acts may be served with process, and s. 16 of the Common Law Procedure Act, 1852, provides for service of municipal corporations and inhabitants of hundreds towns, &c. See too, O. 9, r. 8.

Vacant possession.

When it cannot otherwise be effected service of a writ of summons in an action to recover land may, in case of vacant possession, be made by posting a copy upon the door of the dwelling-house or other conspicuous part of the property: **rule 9**. Vacant possession is where there is no tenant upon the premises, and the tenant has actually abandoned and does not retain the virtual possession.

An action for the recovery of land is the equivalent of the old action of ejectment, and when personal service has not been effected, judgment in default of appearance can only be signed after a judge's order has been obtained.

Substituted service.

When from any cause prompt personal service of a writ of summons cannot be effected, an order for substituted or other service or for the substitution of notice for service may be obtained on affidavit setting forth the grounds upon which the application is made: **Order 9, r. 2**. The order will direct in what way substituted service shall be effected. But before substituted service of a writ of summons is allowed, the Court must be satisfied that there is a reasonable probability that the writ will reach the defendant: *Furber v. King*, No. 1, 29 W. R. 535.

There must be strong probability of defendant getting writ.

Late practice under Bills of Exchange Act.

A plaintiff in an action brought under the Summary Procedure on Bills of Exchange Act, 1855, could not obtain an order for substituted service under this rule; his course was to obtain an order to proceed under the Common Law Procedure Act, 1852: *Pollock v. Campbell*, 1 Ex. D. 50. Judgment will be signed upon production to the proper officer of the order for substituted service, and an affidavit of service, in accordance with the terms of the

order. Substituted service is generally allowed after three ineffectual attempts. And see *Daniel*, p. 404.

Substituted service of a writ in an action against an absconding defendant to recover possession of leasehold houses, the defendant having given the tenants notice to pay their rents to him, was directed to be effected by leaving a copy at each of the houses and advertising in the "Times" and "London Gazette": *Crane v. Jullion*, 2 Ch. D. 220; see *Hunt v. Austin*, *Ex parte J. N. Mason*, 9 Q. B. D. 598. Mode of
effecting.

Where substituted service of a summons to show cause why a sum of money in court should not be paid out to the solicitor of the party for whom it was paid in was asked for, a notice calling upon him to appear in one month was ordered to be put up in the master's office and served upon his then solicitor and also on a mutual friend of the client and his first solicitor, and also to be advertised in the "Times," and then if the defendant did not appear an order was to be made on that summons. Form of
order for
substituted
service.

Where before the hearing the defendant's solicitor is struck off the rolls and the plaintiff cannot serve the defendant personally, an application is made by the plaintiff for leave to make substituted service of a subpoena to name a solicitor, and if necessary there may be added a notice that in default of obedience there will be a motion for judgment pursuant to an accompanying notice of motion: *Hamilton v. Thomas*, Sol. J., 24 Feb., 1883, p. 278.

The writ must be served within twelve months from the date thereof including the day of such date Time.

or while it is in force by renewal or otherwise. Care should be taken to endorse on the writ, within three days after service, the day of the month and week of the service, otherwise the plaintiff will not be at liberty, in case of non-appearance, to proceed by default. Fry, J., in a recent case extended the time for endorsing the date of service on a writ served at Galveston in the United States for a month upon motion under Order 57, r. 6, but required a fresh affidavit of service to be made.

Out of
jurisdiction.

See O. 11,
r. 1.

Scotland or
Ireland.

Service out of the jurisdiction of a writ of summons or notice of a writ of summons, may be allowed by the Court or a judge when the subject-matter of the action is land or stock or other property situate within the jurisdiction, or the cause of action or any part of it arises within the jurisdiction, upon a defendant residing abroad. If the defendant is a British subject—and unless he is resident in Scotland or Ireland the plaintiff should make an affidavit that he is one—the writ is served upon him, and if a foreigner, notice of the writ is served upon him in the same manner as a writ of summons. Order 11, r. 1*d*, giving a discretion to the judge when the defendant resides in Scotland or Ireland relates only to actions on contracts, and will not be applied to other actions: *Fowler v. Barstow*, 20 Ch. D. 240. But no leave to serve a defendant out of the jurisdiction can be given except as specified in Order 40, r. 1: In re *Eager*, *Eager v. Johnstone*, 22 Ch. D. 84 (C. A.) As to foreign corporations, see *Strousberg v. Republic of Costa Rica*, 29 W. R., 125.

Evidence.

The application for leave to serve such a writ or notice must be made before the writ is issued and be

supported by evidence by affidavit or otherwise, showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made. It must be supported by an affidavit of merits, showing that there is a cause of action which arose in England, and the judge must be informed whether or not there is at the place where the defendant resides a local Court which has jurisdiction in the matter, and of all facts necessary to enable him to estimate the comparative cost and convenience of a trial in the one place rather than in the other. The order giving leave will limit the time for appearance. The defendant can move to discharge this, and then affidavits are admissible to contest the question whether the cause of action arose within the jurisdiction; for if it did not the Court would have no jurisdiction to order service: *Fowler v. Barstow*, 20 Ch. D. 240. *Fowler v. Barstow.*

The notice in lieu of service is served in the same manner as a action of summons. The objection to such a notice after it has been issued must be made by application to the judge to set aside the writ. Notice in lieu.

When leave to issue a writ for service out of the jurisdiction, and leave to serve the writ when issued, is desired, the practice in the Chancery Division is not now to apply to the judge in court. These applications are made in chambers, either together or separately. If made separately, a copy of the writ is in the first instance brought to the chief clerk of the judge with whose name it is marked and a verbal statement is made to him of the nature of the action; Application now in chambers. Practice.

whereupon, unless the case is one which requires to be brought before the judge, which it does except in very plain cases, the chief clerk endorses the leave on the copy of the writ; and then the subsequent order giving leave to serve the writ thus issued is made upon affidavit intituled in the action. If the applications are made together, that for leave to serve is supported by affidavit intituled in the matter of the intended action: *Stigand v. Stigand*, 1882, W. N. 4. And now see O. 52, r. 14, as to common law practice.

From the late case of *In re Eager, Eager v. Johnstone*, quoted above and reported also, 31 W. R. 33, it would appear that service of the writ out of the jurisdiction will now be limited to those cases which are specified in Order 11, r. 1.

Limit of
jurisdiction.

The limit of "the jurisdiction" was defined as low-water mark: *Harris v. Franconia*, 2 C. P. D. 173.

Amended
writ.

When a writ has been amended, especially if the object of the amendment has been the introduction of a new clause, it must be served in the same way as if it had been an original writ: Brett, James, and Cotton, L.JJ., *The Cassiopeia*, 4 P. D. 190.

Attach-
ment.

An order on which to ground an application for an attachment should be served personally. But where the party in default had, in fact, notice of the order, which had been served upon his solicitor, it was held sufficient service: *In re Mulcaster, Dalston v. Nauson*, 47 L. J. R. Ch. 609. A motion for

In attach-
ments.

attachment for non-compliance with an order should, under ordinary circumstances, be served personally

on the party, and not merely on the solicitor on the record of the party: *Mann v. Perry*, 50 L. J. Ch. 251. And see further under the head "Attachment," as well as p. 199.

Service is often necessary upon a person before he can do anything in an action. Thus in the case of a counterclaim against a non party he cannot enter an appearance gratis until served with a copy of the defence. His appearance can be discharged by motion of the plaintiff on the counterclaim: *Fraser v. Cooper, Hall & Co.*, W. N. 1883, 110. Hours for service.

Pleadings, notices, summonses, orders, rules and other proceedings, are, with few exceptions, served by being left at the "address for service" before the hour of six in the afternoon, except on Saturdays, when service must be effected before two o'clock. Proceedings delivered after those hours are deemed to be served the following legal day.

CHAPTER IX.

DEMURRER.

A FEW instances of demurrers will illustrate the use of this form of pleading better than a history of the pleading itself; as, however, it has been abolished by the new rules it need not be treated of at any greater length than is sufficient to shew to what class of cases the proceedings, substituted first by O. 29, may by analogy apply.

Instance. Thus it was used in the following case, where a testator directed the trustees of his will at such times and in such manner as they should think fit to sell his copyhold estate and to hold the proceeds in trust for his widow for life and after her death for his children. The testator left six children, all of whom attained a vested interest and were sui juris. The widow and three children brought a partition action and the other children demurred. It was held that the trustees had a trust for sale and not a mere power. That it was not put an end to by all the reversioners attaining a vested interest, and that therefore the Court had no jurisdiction to decree a partition under the Partition Act : *Briggs v. Peacock*, 22 Ch. D . 284.

“Good and
valid dona-
tio mortis
causa.”

If a claim only alleges that a deceased person made a good and valid donatio mortis causa to the plaintiff it was demurrable. The reason being that such a statement of claim does not state facts

material to the plaintiff's real claim: In re *Parton*, *Townsend v. Parton*, 45 L. T. 755.

Under Order 28 any party might demur to any Order 28. pleading, or any part of a pleading which sets up a distinct cause of action, defence, set-off, counter-claim, &c., on the grounds that the facts alleged therein do not show any cause of action, defence, &c., to which effect can be given by the Court against the party demurring.

In equity a bill was often demurred to on the ground that effect could not be given by the Court to it against the party demurring, on the ground of multifariousness. In *Bouck v. Bouck*, L. R. 2 Eq. 19, a bill filed by one of the next-of-kin of an intestate against the administrator for administration, and also to set aside a deed (as against other defendants) whereby the plaintiff had assigned a portion of his interest in the estate for their benefit, was demurred to by the administrator on the ground of multifariousness, and the demurrer was allowed. See also *Cox v. Barker*, 3 Ch. D. 359. Of late however it would have to be a very extreme case in which a claim does not show a cause of action to which effect can be given by the Court, if it shows any cause of action at all; but if the performance of a duty of imperfect objection were claimed, it could have been demurred to. The illustration of the concentric circles given in chapter ii. explains this. Moreover although in *Stokes v. Grant*, 4 C. P. D. 25, where the defendant set up merely matters of law in his defence, and they were ordered to be struck out as embarrassing under Order 27, r. 1, it was said that they might have been raised by demurrer; yet demurrers were

Multifari-
ousness.

See p. 23.

nevertheless not encouraged if they deserved the epithet given them it is believed by Mellish, L.J. of "niggling." And Lord Selborne, in *Ward v Lawson*, L. R. 8 Ch. 68, explains the principle upon which judges acted in deciding questions on demurrer

Perhaps as good a general proposition as could be laid down with reference to when a demurrer lay is that extracted from *Watson v. Hawkins*, 24 W. R. 884. A party might demur to any portion of a pleading, provided it was clear that that portion showed no claim to any relief against him, whether expressly prayed for or not; and he should not have applied at chambers to strike it out. Under O. 25 r. 4, it would appear that only a whole pleading will be struck out.

Statute of
Limita-
tions.

And so the Statute of Limitations, but not the Statute of Frauds, might be set up by demurrer, in cases which fell within the operation of section 34. For as is said in *Dawkins v. Lord Penrhyn*, 4 App. Ca. 51: "The title to an estate, and not the mere right to proceed for its recovery, is affected by the Statute of Limitations." And so, if the claim showed on the face of it that the time had gone by within which a title to land must be asserted, the defence of the Statute of Limitations was properly raised by demurrer; but the Statute of Frauds must always have been pleaded. A defence founded on it could not be raised by demurrer. In *Shardlow v. Cotterill*, 1881, W. N. 2, the late Master of the Rolls held that the objection of the Statute of Frauds could not be taken by demurrer, for the reason that *Catling v. King*, 5 Ch. D. 660, was an express decision to that effect, and not merely a dictum of the Court of Appeal. See also *Catling v. King*, 5 Ch. D. 660, and

Statute of
Frauds.

Futcher v. Futcher, 50 L. J. Rep. Ch. 735. It was held in *Noyes v. Crawley*, 10 Ch. D. 31, that the Statute of Limitations could be set up on demurrer, and was a good defence in a partnership action; and perhaps it may be said generally that the Statute of Limitations might always be set up on demurrer as regards real property, for the title itself is extinguished under it, and that it might also be generally used in all actions proper to the Chancery Division, but that in personal actions it could not. See the Irish case of *Nicholls v. Hibernian Joint Stock Banking Co.*, reported in the Law Times, 3rd August, 1878.

It may perhaps be well to mention here that the Statute of Limitations does not apply in the case of the misapplication of funds as to which the persons attempting to set it up stood in the position of trustees, as for instance the directors to a company: *Flitcroft's case*, 21 Ch. D. 537.

When Statute of Limitations does not apply.

When a demurrer had been overruled, the same point might be taken at the trial, and thus brought before the Court of Appeal: *Johnasson v. Bonhote*, 2 Ch. D. 298.

A good case to illustrate where a demurrer would lie is *Day v. Brownrigg*, 10 Ch. D. 294. There the plaintiffs alleged that their house had been called "Ashford Lodge" for sixty years, and the adjoining house occupied by the defendant had been called "Ashford Villa" for forty years; that the defendant had lately changed the name of his house to "Ashford Lodge" which had caused the plaintiffs much inconvenience and had lessened the value of their property, and they claimed an injunction. It

Day v. Brownrigg.

was held, overruling *Malins, V.-C.*, that this was not a violation of any legal right of the plaintiffs and that as there was no allegation of a malicious intention the demurrer would lie.

When
demurrer
appro-
priate.

It may therefore be stated generally that the proper way to raise the question whether a claim disclosed a good cause of action or not, was by demurring to it; and by consequence, that a demurrer was perhaps the best way of testing whether any pleading could have effect given to it, or to a material part of it by the Court, against the party demurring or not. Thus in *Hardman v. North Eastern Ry. Co.*, 3 C. P. D. 168, the statement of claim alleged that the surface of the defendant's land had been artificially raised by earth placed thereon, and that in consequence rain water falling on the defendant's land made its way through the defendant's wall into the plaintiff's house which adjoined, and caused substantial damage. In this case it was held upon demurrer that the claim disclosed a good cause of action.

Where however a part of a pleading was objected to which was not of an important character and did not disclose a distinct cause of action, the proper course was to apply under Order 27 that the part objected to might be struck out, as tending to prejudice embarrass or delay the fair trial of the action.

To writ.
See p. 83.

In *Robertson v. Howard*, 3 C. P. D. 280, a demurrer was allowed to a specially endorsed writ with a notice in lieu of a statement of claim under Order 21, r. 4. The endorsement showed the claim in this case to be for breach of an alleged agree-

ment, which was apparently without consideration. This case, however, was disapproved of in the late case of *Fawcus v. Charlton*, quoted on p. 83, and even if demurrers had not been abolished the practice it illustrated would probably not have been followed.

A demurrer to a writ alone without a notice in lieu of statement of claim did probably not lie except by consent; at all events, the endorsement on a writ is not a pleading—*Wallis v. Jackson*, L. J. Notes of Cases, March 16, 1883, p. 32, Chitty, J.—so as to entitle a plaintiff to move for judgment without the consent of the defendant on admissions.

Although therefore demurrers are now in reality things of the past, it may be useful to state, in a narrative form, the effect of the rules which lately governed them. A demurrer must have been specific, that is, it must have stated whether it was to the whole or a part, and if to a part, to what part of the opposite party's pleading it went. Some ground in law for the demurrer must have been stated, but the party demurring was not bound to keep to it. The demurrer must not have been frivolous or it would be set aside with costs. A demurrer and defence might be combined, and a party might even by leave plead and demur to the same matter, but he could not do so without leave: *Hagg v. Darley*, 47 L. J. R. Ch. 567. *Bell v. Wilkinson*, 26 W. R. 275, decided that after a demurrer had been decided and it was desired to put in an answer that this would be allowed if at all plausible. Here the Common Law Division was following the practice of the Chancery Division.

Must
have been
specific.

Pleading
and de-
murring.

Either party might enter a demurrer for argument, Time.

but if not entered and notice thereof given within ten days by the party whose pleading was demurred to or an order for leave to amend served, the demurrer would have been held sufficient, and the party whose pleading was demurred to had to pay costs as if allowed on argument; and costs would follow as of course on argument, unless otherwise ordered.

While a demurrer was pending, the pleading could not be amended without leave.

Effect of.

A demurrer to the whole claim upheld was in effect a decision of the action, unless otherwise ordered, and the costs of the action must have been paid forthwith. Matter demurred to was deemed to be struck out in the case of a successful demurrer; when unsuccessful, costs must have been paid by the loser unless otherwise ordered, but leave to raise by pleading any case in opposition to the matter demurred to might have been given. If leave was not given, the consequences of a default in pleading would follow. See O. 25, r. 3.

Use of.

It is plain that a demurrer used judiciously might have brought an action to a speedy termination. The very essence of it appears however to have been its sincerity, and it ought to have been to some principle of law pretty well defined: e.g., if a claim demurred to shewed only *Damnum absque injuria*, a demurrer to it would have been sustained.

To claims.

It stands to reason, and experience has shown, that demurrers to claims were much more useful than to any other pleadings, because they much more effectually, and much sooner if effectual, brought the action to an end, and therefore there appears to be no

necessity for considering demurrers to other pleadings at any length. As further instances of demurrers to claims, the *Commissioners of Sewers of the City of London v. Gellatly*, 3 Ch. D. 610, and *Hagg v. Darley*, referred to before, may be cited.

In the former case the defendant demurred because under an Act of Parliament the plaintiffs were prohibited from taking proceedings without leave of a certain body, and they did not state that they had obtained such leave, under which circumstances the demurrer was allowed.

In the latter the defendant sold the plaintiff the business of the manufacture of a trade secret, and he covenanted not to carry on such a business for fourteen years, and not to disclose the secret for a like period. The plaintiff brought an action, alleging that he was breaking these covenants. The defendant demurred on the ground that the covenant was too general and in restraint of trade; but the demurrer was overruled.

Where a question of law has been decided on demurrer and an appeal has been brought, the Court will not in general stay the trial of the issues of fact pending the appeal: In re *F. B. Palmer's Application*, 22 Ch. D. 88 (C. A.). Appeal,
see p. 205

Under the Judicature Acts substantial demurrers have been favoured, at all events in two ways. In *Hodges v. Hodges*, 2 Ch. D. 112, a defendant who had obtained an extension of time in which to deliver his defence, was allowed to demur alone within such extended time; and in *Powell v. Jewesbury*, 9 Ch. D. 34, Jessel, M.R., said that the old

Leave to
amend
authorised
demurrers.

Chancery rule that a defendant cannot demur to what he has previously answered is no longer in force. Here the defendant put in a defence not demurring to any part of the claim. The claim was amended, but no entirely new case raised. The defendant obtained leave to amend his defence, and he put in a defence and demurrer. It was held that leave to amend the defence authorised the putting in a demurrer.

When
explicit
enough.

This case is also valuable as showing what words are explicit enough to show the part of a pleading that is demurred to. The following words were held to be sufficient: Demurrer to "such part of the amended statement of claim as claims damages alleged to have been sustained by reason of the alleged wrongful acts of the defendant in opening accounts therein in that behalf referred to." Even under the Judicature Acts in a claim for libel or slander the defamatory words had to be set out, as was pointed out in *Harris v. Warre*, 4 C. P. D. 125, and a demurrer lay to the claim if they were not.

Demurrer
to parts
of plead-
ings.

It only remains to point out that demurrers to parts of a pleading by which the number of hearings of an action will be increased were not encouraged: Brett, L.J., *Leyman v. Latimer*, 3 Ex. D. 356, 7. The object of a demurrer should have been to diminish ~~an~~, by getting the case disposed of if possible once all; and so if not to a whole pleading they must least have been to a substantial part of one. A paragraph could not be demurred to because it is not assigned by the plaintiff to any or to a wrong prayer in the statement of claim. Lord Coleridge said, in *Watson v.*

Hawkins, 24 W. R. 884, that if each fact set out by the plaintiff tends to show that he is entitled to some relief, and that relief is asked for in one of the prayers, the paragraph setting out that fact must stand. Even if the plaintiff asked for wrong relief, Lindley, J., appears to have thought that the paragraph could not be demurred to, if the general facts entitled him to any relief at all. A general demurrer for want of equity though not alleging any specific ground if not always might yet sometimes be sufficient, and was in *Bidder v. McClean*, 20 Ch. D. 513. In that case the statement of claim was so framed that the only way of meeting it was by the simple allegation that it did not show any cause of action. In many cases however this would have been improper, as Order 28, r. 2, required some ground of law to be stated. If therefore the want of equity was the ground of the demurrer the provisions of the rule would have been complied with; if however it was not the real ground in law must have been stated.

General demurrer.

CHAPTER X.

DISCOVERY.

- O. 31.** **O. 31** now governs discovery and under it in actions for fraud and breach of trust alone can interrogatories be exhibited as of right ; and even then, as in every case where exhibited by leave, they must be confined to the matter in question, and are not necessarily relevant because they might be admissible as questions on oral cross-examination. This is a very great change indeed, but still the right of discovery which existed in the Court of Chancery still exists in the High Court of Justice except so far as it is modified by the Judicature Acts and the General Orders under them ; and therefore one party still has a right to exhibit interrogatories not only for the purpose of obtaining from the opposite side information as to material facts which are not in his own knowledge and are within that of the other side, but also for the purpose of obtaining from him admissions which will make it unnecessary to offer evidence as to the facts admitted : *Attorney-General v. Gaskill*, 20 Ch. D. 520. But the parties who may interrogate must be opponents. Thus, if A. brings an action against B., and B. counterclaims against C. and A., C. cannot interrogate A. : *Molloy v. Kilby*, 15 Ch. D. 162. A defendant is, however, entitled to an affidavit of documents from a next friend of a person of unsound mind ; and on appeal, it was held that where a full answer and not a qualified order (as to the time at which it was to be made) had been asked for in the Court below, if the order for full answers must be
- In Court of Chancery.
- Objects.
- Who may interrogate.

discharged, no qualified order is to be made: *Parker v. Wells*, 18 Ch. D. 477.

A guardian ad litem of a lunatic cannot be interrogated: *Ingram v. Little*, W. N. 1883, 124.

Who may not be interrogated.

In fact the practice under Order 31, r. 12, ought to be confined strictly to persons who are parties to the action. In other cases the proper course is a subpoena duces tecum. Thus In re *Corsellis Lawton v. Elwes*, 52 L. J. Ch. 399, which was an administration suit in which an infant plaintiff was suing by three next friends, on an application by a fourth for removal of two of the other next friends, he cannot take out a summons for the production of documents by the two next friends under Order 31, r. 12.

Who cannot be ordered to produce.

Moreover, Order 31, r. 1, does not give a party a right to interrogate where such right was not recognised by the Courts of Equity before the Judicature Acts.

Judicature Acts give no new right.

For instance the plaintiff in an action to recover statutory penalties cannot now any more than then administer interrogatories to the defendant; for in such an action equity would not have granted incidental discovery: *Hunnings v. Williamson*, 31 W. R. 336; 10 Q. B. D. 459. In fact the right of discovery now is not in principle more extensive than formerly. It is possible that *Lyell v. Kennedy* however affected the value of *Hunnings v. Williamson*.

The object of discovery should be to find out what evidence the other side relies on to rebut a case with, in order that the matter in dispute may be settled, if it is found to have more in its favour than was anticipated. And also to ascertain exactly what is admitted, that the expense of proving needless matters may be avoided. Furthermore by interrogatories a witness might have been cross-examined in the severest way; and it must be a greater advantage to be able to cross-examine an

Advantages of interrogatories.

opponent than to make him a witness and simply take the chance of being allowed to do so at the trial, if the judge thinks he has shown himself sufficiently hostile. See now, however, O. 31, r. 1. Again a witness by his answers commits himself to the details of one version of a story, and at the hearing it is known pretty well what he will say; and if misled one can point out and comment on the discrepancies between his oral and written testimony. This advantage is particularly apparent when there are co-defendants, as for instance principal and agent, because the admissions of one defendant can of course be used as evidence against the other, provided only he is called as a witness. The best way to consider the general effect of the present practice will perhaps be to take discovery and interrogatories together, and draw some conclusions from such late observations of the learned judges as to them as seem likely to be of lasting importance.

Old
method of
discovery.

Long ago the machinery of discovery consisted of three parts, discovery of documents, particulars, and interrogatories, and these were in those days kept distinct. Soon however it was found to be less expensive and more convenient to introduce among the interrogatories the application for the discovery of documents; and at length questions were asked as to the specific acts which were intended to form the issue to be tried between the parties; and indeed now the only way particulars in Chancery are obtained is by exhibiting interrogatories. The intention of Order 31 seems to be to allow a litigant in every action to exhibit by leave proper interrogatories to his opponent as to every relevant matter on which he could examine him if he made him his witness at the trial. The cardinal rules are now as they always were :

that every plaintiff has a right to a discovery of the evidences which relate to his case, and every defendant an equal right to withhold what exclusively relate to his own. And the ground of inconvenience is not held to be a sufficient excuse for not answering interrogatories. Thus an executor cannot refuse to set out a full account of his testator's personal estate on the ground that such discovery would be more conveniently made upon taking the usual inquiries after judgment: *In re Sutcliffe, Alison v. Alison*, 29 W. R. 732. See however the new clause in O. 31, r. 12. Inconvenience no bar.

In an action to recover possession of land by a legal title it used to be thought that a plaintiff could not interrogate even with reference to his own alleged title, much less as to that of the defendant, nor could he in such an action get production of documents in the defendant's possession which the defendant swore related only to the defence of his own title: *Lyell v. Kennedy*, 20 Ch. D. 484. When, however, this case came before the House of Lords, it was decided that the true rule is that in an action for the recovery of land the plaintiff is entitled to discovery as to all matters tending to support not the defendant's but his own case: 8 Ap. Ca. 217. In actions to recover possession of land.
Lyell v. Kennedy.
Rule.

But though a defendant swears that documents support his own title and do not contain anything which assists the plaintiff's case the Court can order production at least in proceedings excepted by Order 62 from the operation of the Judicature Act, if it is reasonably certain that the defendant is mistaken: *Attorney-General v. Emerson*, 22 Ch. D. 191. Where defendant wrongly says that documents are title deeds.

The proper test with reference to title deeds is laid down in *Combe v. Corporation of London*, 1 Y. & C. 651, and approved in *Attorney-General v.* Rule as to title deeds.

22 Ch. D. *Emerson*, at p. 199. If it is with distinctness and positiveness stated in an answer that a document forms or supports the defendant's title and is intended to be or may be used by him in evidence accordingly and does not contain anything impeaching his defence or forming or supporting the plaintiff's title or the plaintiff's case, that document is protected from production unless the Court sees upon the answer itself that the defendant erroneously represents or misconceives its nature.

Title
deedr.

And as to title deeds the rule is that a mortgagee or purchaser is not bound to produce his title deeds, and may resist the production of all deeds which are muniments of title; but this rule does not extend to the mortgage deed itself, which is as much evidence of the mortgagor's title to redeem as it is of the mortgagee's estate: *Patch v. Ward*, L.R.1 Eq. 440.

An affidavit of documents of title must however be made by a defendant in an action for the recovery of land of which he is in possession: *New British Mutual Investment Co. v. Peed*, 3 C. P. D. 196. In the case of a joint tenancy by a defendant, production of title deeds was refused in *Kearsley v. Philips and another*, 10 Q. B. D. 36, 465; and 31 W. R. 92.

Time for.

In Chan-
cery.

As to the time at which discovery is granted, the practice in Chancery was not similar to that at Common Law. Jessel, M.R., in *Harbord v. Monk*, 9 Ch. D. 617, says that it has never been the practice in the Chancery Division to delay discovery by not allowing the plaintiff on delivery of his statement of claim to deliver interrogatories, the reason being that in an ordinary action in the Chancery Division the interrogatories justify themselves. The plaintiff often in equity cases wants an answer to know how to amend

his claim and frame his case. On the Common Law side if interrogatories are not material at the time they are exhibited, as for instance before defence, and it appears that they will be answered in the defence, they may be ordered to be struck out. For if a plaintiff delivers interrogatories before the statement of defence he puts upon the defendant the onus of applying to have them struck out, and he will have to give reasons for wanting the answers; if he cannot give satisfactory reasons they will be considered to be vexatious or for the purpose of increasing costs, and not put bonâ fide. The time however is now fixed by O. 31, r. 1.

In *Mercier v. Cotton*, 1 Q. B. D. 444, James, L.J., said that in nine-tenths of the cases at Common Law the plaintiff has no cause whatever for the purposes of his action to deliver interrogatories before the statement of defence. Mellish, L.J., also said that in a large majority of cases at Common Law it is not possible until the defence is delivered to tell whether interrogatories are material, for it would be useless to exhibit interrogatories on matters which would at once be admitted by the defendant. Interrogatories not material at one stage of an action may become so at another. For instance a defendant may say upon delivery of a claim and interrogatories together, that he intends to demur to the claim. In this case the interrogatories however good in themselves and justifiable could not be at that time material.

As regards production of documents, upon which O. 31, r. 12, must be consulted Baggallay, L.J., said, in *The Republic of Costa Rica v. Strousberg*, 11 Ch. D. 326, that he desired to guard himself against expressing any opinion that there is no right under the new rules to apply for the production of documents previously to the delivery of the state-

ment of claim, because rule 2 of Order 31 was very wide. James, L.J., always appears to have disliked production at an early stage. In *The Union Bank of London v. Manby*, 13 Ch. D. 241, he says that there is a great deal to be said in support of the proposition that it ought not to be a matter of course for a plaintiff to rush in at once with an application for production as soon as his statement of claim has been delivered, now under O. 31, r. 12, production may be postponed or limited indefinitely.

If the defendant admits the plaintiff's whole case, still the plaintiff may have a right to the production of documents, that he may know whether any other parties are interested. In *Egremont Burial Board v. Egremont Iron Ore Co.*, 28 W. R. 594, reported also at 14 Ch. D. 158, Malins, V.-C., said that, as a matter of expediency, it was desirable that the defendants should have production at the earliest time. This was a motion by the defendants for production by the plaintiffs of a conveyance to them before putting in their statement of defence.

Docu-
ments re-
ferred to in
claim.

But a defendant is entitled to inspection of documents referred to in the statement of claim or affidavits before putting in his defence: *Quilter v. Heatley*, 31 W. R. 331. And as to documents referred to in general terms, see *Smith v. Harris*, Sol. J., June 16, 1883, p. 554. See, too, O. 30, r. 5.

Rule as to
time.

And so it seems that in an ordinary Chancery action both interrogatories and production will be ordered immediately upon the delivery of the statement of claim; but neither the one nor the other, except perhaps in a most exceptional case, at Common Law. There *Hancock v. Guerin*, 4 Ex. D. 3, was the authority. In it the Court said that, except under some very special circumstances, it could not know until delivery of defence what the matters

in question in rule 11 are. Cleasby, B., thought that in order to get discovery before the defence was delivered, a special affidavit was necessary to show that it was for some reason important to have at once an affidavit of documents; for that if the application was made without affidavit under rule 12 it must comply strictly with the terms of the rule and show itself what the matters in question were. And further with regard to time, the Court has a discretion as to ordering the defendant to answer interrogatories before trial, where the answers cannot help the plaintiff to obtain a decree, but will only be of use to him if he does: *Parker v. Wells*, 18 Ch. D. 477. In this case A. alleged that B. held moneys upon certain trusts, which B. denied. A. cannot interrogate B. as to his dealings with the trust fund until the trust has been established. See O. 31, r. 20.

Where answers cannot help plaintiff to get a decree.

Even in an action transferred from the County Court, the plaintiff will not be entitled to discovery until after delivery of a statement of claim: *Davies v. Williams*, 13 Ch. D. 550; but though great delay has taken place leave may be given to file interrogatories at the close of the pleadings. Two days were given for this purpose, but the coming on of the action was not stayed by Fry, J., in *London and Provincial Marine Insurance Co. v. Davies*, 5 Ch. D. 775. See *Disney v. Longbourne*, 2 Ch. D. 705.

In County Court.

After close of pleadings.

The proper place for the production of documents is generally the office of the London agent. But the Court has a discretion in this matter. Where the documents are very numerous and important and might be lost in transit their production may be ordered at the place where they are generally kept. But in such a case leave is often given to the party

Place of production.

are relevant to his case (though if there is some preliminary question to be tried, the inspection may be postponed till after such question is tried), except (1) in the case of communications between a party and his solicitors and counsel, with a view to obtain legal assistance and advice, and (2) of communications made by a party or his agent with a person not himself a solicitor, but which can be considered as made with him as deputy or agent for the solicitor.

Privilege,
how
pleaded.

And with regard to privilege the rule is, "Once privileged always privileged;" and if privilege is claimed it must be most clearly pleaded. It is not sufficient to say that the knowledge for which it is claimed was acquired during the existence of the relation of solicitor and client, but it should be stated that it has been acquired in no other way as well, as everything is taken most strongly against the pleader: *Lewis v. Pennington*, 8 W. R. 466. And the documents as to which privilege is claimed must have been written ante litem motam: *In re Mason*, 22 Ch. D. 609.

Shorthand
notes of
former
action

Where there were two actions, one by the charterer against the shipowner for not discharging cargo according to charter-party, and another by the charterer against the merchant on the contract of sale, in the second action it was urged that the defendants were entitled to see communications which were privileged in the first action, because they were relevant to their case in the second action, for had it not been for the first action the damages for this breach of their contract would have been nominal. This was refused, and Mellor, J., said: "I am glad to find that our decision is in conformity with the practice in the Courts of Equity." Where there are two actions in one of which A. is de-

fendant and in the other plaintiff relating to the same subject matter, A. is not obliged to produce shorthand notes of proceedings in the first action unless taken for the purpose of the second action upon the application of the defendant in the second action, and his affidavit need not show that the notes came into existence exclusively for the purposes of such action: *Nordon v. Defries*, 8 Q. B. D. 508.

It is clear that with regard to documents inspection cannot be refused because the person who wrote them stipulated that they should be considered to be private and confidential and refuses to authorise their production: *M'Corquodale v. Bell*, 1 C. P. D. 476; for the word privilege in law applies only to communications between solicitor and client, or at the farthest between solicitor his deputy and the client, with a view to litigation. See *Kitcat v. Sharp*, Sol. J., Dec. 30, 1882, p. 134, and *Hints to Solicitors*, p. 36.

A definition of privilege which was approved of by Mr. Justice Kay in *Hill v. Hart Davies*, 21 Ch. D. 801, is taken from Addison on Torts, ed. 5, 166; and on privilege generally, see *Clagett v. Phillips*, 2 Y. & C. C. C. 86, and *Pearse v. Pearse*, 1 De G. & S. 12.

It need hardly be said that objections to answer interrogatories must be honest bonâ fide ones. For instance where a company elected their own clerk, who was a solicitor, to answer for them, he was not allowed to plead privilege, and see *Republic, &c. v. Erlanger*, 1 Ch. D. 171, and r. 5. Where in an action for dissolution of partnership the plaintiff alleged that the defendant had behaved himself badly towards him in the presence of clients, he was ordered to answer as to the particulars and circumstances of the occasions, but not the names of the clients, and not to set forth the partnership accounts (the application for the latter being premature).

"Private
and confi-
dential."

Definition
of privi-
lege.

Privilege.
Telegrams.

As to pleading privilege in an action for libel, a communication to which privilege might be pleaded if sent by post is not privileged if sent by telegram: *Williamson v. Freer*, L. R. 9 C. P. 393. Whether this is universally true, quære. As to a letter put in a wrong envelope, see *Thompson v. Dashwood*, 1883 W. N. 84.

Servant's
character.

Moreover, if a servant sues his late master for libel in giving him a bad character by letter to a person with whom he desires to get a new situation, that letter is not privileged in a legal sense. It has not yet been decided whether it would be a ground for refusing production if the affidavit of the master pledged his belief that answering the question would tend to criminate him, for the obvious reason that such an affidavit would be inconsistent with the nature of any defence that would be likely to be raised. Cotton, L.J., however, in *Webb v. East*, 5 Ex. D. 114, says: "That is a valid objection (the answer tending to criminate) to answer an interrogatory if taken on oath; and certainly nothing less would give protection from discovery, even if that would." Upon this point all three judges in that case desired to keep their judgments open; and Kelly, C.B., and Stephen, J., when the case came before the Divisional Court did not take the point.

Answer
tending to
criminate.

When an-
swer might
criminate.

With regard to the power a party interrogated has of refusing to answer, upon the ground that his answer might tend to criminate him, the matter was well discussed in *Fisher v. Owen*, and it was decided by that case, 8 Ch. D. 654, that the way to take the objection is not by having the interrogatory struck out, but by declining to answer, upon the ground that it will tend to criminate the deponent. But in the later case of *Lamb v. Munster*, 10 Q. B. D. 110, see p. 194, where the judgment of Field, J., deals

also with the case of a witness in the box, it was held that an objection to answer interrogatories on the ground of the tendency of the answer to incriminate may be valid, though not expressed precisely, if from the (1) nature of the parties and (2) of the circumstances such a tendency is probable. That case was an action for libel, and the defendant pleaded a denial of the publication, and to an interrogatory asking in effect whether he had published it the answer, "I decline to answer all interrogatories upon the ground that the answers to them might be used to incriminate me," was allowed. See also *Atherley v. Harvey*, 2 Q. B. D. 524, and *Hill v. Campbell* (judgment of Brett, J.), L. R. 10 C. P. 239.

The same learned judge (Cotton, L.J.) in the case of the *Southwark Water Co. v. Quick*, 3 Q. B. D. 321, again calls attention to a difference between discovery by the production of documents and discovery by compelling an opponent to answer interrogatories. He illustrates this difference by taking the case of the directors of a company, who when answering interrogatories must not only answer as to their own individual knowledge, but in answering for the company get such information as they can from the servants of the company, and must disclose to their opponent the knowledge which they have got, though such knowledge is got from a document which is itself privileged. See also *Bolckow, Vaughan & Co. v. Fisher*, 10 Q. B. D. 161. He says further that if a document comes into existence for the purpose of being communicated to the solicitor, with the object of obtaining his advice, or of enabling him either to prosecute or defend an action, then it is privileged, because it is something done for the purpose of serving as a communication between the

Difference
between
discovery
by produc-
tion and
interroga-
tories.

client and the solicitor. This seems to show that in his opinion then (1878) something might be got by interrogatories that could not be had by discovery.

Instance of a quasi-legal communication not privileged. Communications between a person and a member of the Heralds' College, employed by him to support a protest against a pedigree being marked there, are not privileged: *Slade v. Tucker*, 14 Ch. D. 824.

Affidavit of documents. The affidavit in answer by the party against whom an order for discovery has been made must be full,

because the person seeking discovery is bound by it and cannot adduce evidence to contradict it. The facts upon which privilege is claimed must be set out and verified on oath. Paragraph 3 of Form 8 (the form referred to in rule 13 as the one in which answers may be) says, "Here state upon what grounds the objection is made, and verify the facts as far as

Form Ap. B. answers may be." If a correspondence is stated to be professional communications of a confidential character for the purpose of getting legal advice, the dates of the letters and such other particulars of the correspondence as might enable the applicants to discover indirectly the contents of the letters need not be set out. This would be making persons furnish evidence against themselves in the action. As the object of the affidavit is to enable the Court to order the documents to be produced if it thinks fit, if words are used which if true protect the documents, no further particularity is necessary in the case of documents for which privilege is claimed than for those where it is not. A description of the documents which enables production if ordered to be enforced is sufficient. In *Taylor v. Batten*, 4 Q. B. D. 87, the description—"The documents referred to in paragraph 2 of my former affidavit are numbered 50 to 76 inclusive, and are tied up in a bundle marked with the letter 'A' and initialed by me," was held to be

What need not be told.

What description sufficient.

Instance. In *Taylor v. Batten*, 4 Q. B. D. 87, the description—"The documents referred to in paragraph 2 of my former affidavit are numbered 50 to 76 inclusive, and are tied up in a bundle marked with the letter 'A' and initialed by me," was held to be

sufficient. But "I have also in my possession or power certain documents letters and correspondence which have passed between my legal advisers and myself, in relation to the matters in question in this case, and with a view to my defence to the plaintiff's claim, and certain instructions to and opinions of counsel in relation to the same matter, all of which I claim to be privileged from production," was held to be insufficient, as it only describes the documents as "certain documents, letters," &c., without any further identification. The latter description would not enable production to be enforced if it were ordered by the Court.

What not
instance.

And further the case of *Gardner v. Irvin*, 4 Ex. D. 49, shows that an affidavit is insufficient if it merely states "that the documents are privileged." The facts upon which the objection to produce is grounded must be stated and also verified.

Reason of
objections
to produce
must be
given.

The principle laid down in *Taylor v. Batten* was approved by the Court of Appeal in *Bewicke v. Graham*, 7 Q. B. D. 412, and was extended expressly to an application for inspection, so that now there is no doubt that the affidavit in *Taylor v. Batten* is sufficient to identify documents for which privilege is claimed, whether on an application for an affidavit of documents or on an application for inspection of the documents already given in such affidavit of documents. *Bewicke v. Graham* also shows that general rather than particular identification is what should be aimed at; for otherwise, the nature of the very documents which were entitled to be privileged from production might be shown.

Identifica-
tion should
be general
not par-
ticular.

The costs of an affidavit of documents setting out a very large number of letters instead of referring to them in bundles properly identified was ordered to

Affidavit
unneces-
sarily
prolix.

be taken off the file, the costs to be paid by those who put it on: *Walker v. Poole*, 21 Ch. D. 835.

Conclu-
siveness of
affidavit.

And an affidavit of documents is conclusive against the party seeking discovery unless it can be shown either from the affidavit itself or from the documents therein referred to or from an admission in the pleading of the party swearing the affidavit, that other documents are in his possession or power which are material and relevant. Only in these cases will a further affidavit be ordered: *Jones v. Monte Video Gas Co.*, L. R. 5 Q. B. D. 556, cf. *Attorney-General v. Emerson*, 22 Ch. D. 191.

When no
further
affidavit.

Where an affidavit for discovery has been made, if no further affidavit of documents is applied for, it must be taken to be true, and therefore in the case of an affidavit like that in *Taylor v. Batten*, the documents in it must be considered to be sufficiently enumerated, and not to relate to the case of the applicant or to tend to support it; for the affidavit must not only identify the documents, but if there is any objection to their production, it must state it; and if this is done, and no further affidavit is applied for, it must be assumed to be true.

When
further
affidavit
applied
for.

If a further affidavit is applied for, and it may be applied for wherever it can be shown either from the affidavit itself or from the documents therein referred to, or from an admission in the pleading of the party swearing the affidavit, that all discovery material and relevant to the issue has not been made, but not otherwise; a further affidavit may be ordered, and if this is not made satisfactorily, attachment may then be directed. For example, in *Lyell v. Kennedy*, 31 W. R. 618, the defendant in his affidavit objected to produce certain documents as relating solely to the

defence of his title. When it was found in comparing the list of the documents for which protection was claimed that they did not answer the description, a further and better affidavit was ordered.

If however an attachment is moved for against the party who does not make an affidavit, and it is shown that he is not in a condition to make one, no Court would grant an attachment. Attachment.
O. 31, r. 21.

Special circumstances may also make the Court not order attachment. Thus attachment was refused against the secretary of a company who did not bring some documents with him to a reference as ordered, because his directors refused to allow him to do so: *Crowther v. Appleby*, L. R. 9 C. P. 23.

In like manner, supposing there are two parties against whom an application is made to dismiss the action because both have not joined in it, and it is shown satisfactorily that one is not in a condition to make an affidavit, no Court would dismiss the action. So much for the pains and penalties of not answering or not answering sufficiently, according to Cotton, L.J., in *Wilson v. Raffalovich*, 7 Q. B. D. 561. *Wilson v. Raffalovich.* In that case underwriters were suing shipowners in the name of R. & Co., and an order having been made for an affidavit of documents and also a further order against the members of the firm of R. & Co.; upon an affidavit by the solicitor to the underwriters that R. & Co. were abroad, and would not give further discovery, and that the real plaintiffs had done all that they could do to comply with the order, it was held by the Court of Appeal, reversing the decision of the Queen's Bench Division, that the case must be treated as if the nominal plaintiffs on the record were suing for their own benefit, and that

the making a further affidavit could not be dispensed with.

When
order for
produc-
tion served
on solicitor
to party.

But in *Joy v. Hadley*, 47 L. T. 615, Fry, J., gave leave to issue a writ of attachment against a person upon whose solicitor the order for production of documents had been served. The case itself should however be referred to. And see r. 22.

Matter
must be
before
Court.

There must be at the time before a Court a matter in question in an action within the meaning of Order 31, r. 12, for a summons for an affidavit of documents and inspection to be properly taken out: *Penrice v. Williams*, L. J. Notes, March 10, 1883, p. 32; reported also 31 W. R. 496; and even interrogatories can be administered in an interpleader issue: *White v. Watts*, 12 C. B. N. S. 267.

Inter-
pleader
issue.

Partial
produc-
tion.

Production was ordered confined to parties parcels and plans in *Ponsonby v. Hartley*, by Pearson, J., L. J. Notes, Feb. 3, 1883, p. 11, and upheld on appeal.

Answers
must be
got by
parties
when pos-
sible from
their ser-
vants as to
things
under their
control.

In the case of interrogatories administered to ship-owners as to the navigation of a stranded ship by the ship's officers, they were held to be obliged to ascertain them unless the officers had left their service or were out of reasonable reach: (C. A.) *Bolckow, Vaughan & Co. v. Fisher*, 31 W. R. 235; 10 Q. B. D. 161. See *Pavitt v. North Metropolitan Tramways Company*, W. N. 1883, 100. Cf. O. 31, r. 28.

Inspection
of deed in
joint power
of party to
action and
someone
else.

But a plaintiff is not entitled to inspection of a deed which the defendant swears in his affidavit of documents is in the joint possession or power of himself and another not a party to the action: *Kearsley v. Philips*, 31 W. R. 92 (C. A.).

Lunatic's
title deeds.

A plaintiff cannot have inspection of documents of title in an action against a defendant as committee

of a lunatic for trespass, for they are in the custody of the Court of Chancery: *Vivian v. Little*, W. N. 1883, 112.

Any party having a right to the production and ^{Copies.} inspection of documents has a right to take copies of them, and a solicitor's lien is no bar: *Pratt v. Pratt*, 51 L. J. Ch. 838.

As the rule is that one party is entitled to dis- ^{At Com-}covery of all that an opposite party relies on to ^{mon Law.} rebut his case with, it is plain that inspection of documents or particulars might not be sufficient, and that therefore interrogatories might be necessary as well. The remarks of Thesiger, L.J., in *Saunders v. Jones*, 7 Ch. D. 451, explain this. He points out ^{Discovery.} that discovery might be had in the Common Law Courts (1) of any documents which were material to the matter in dispute between the parties; (2) that if there were any general allegations in the ^{Particu-}pleadings of either party, his opponent could obtain ^{lars.} particulars, "the object of which was to limit ^{See p. 110.} the generality of those pleadings and enable the other party to know accurately what was the case to be brought against him" (but as to particulars the Court in an action for seduction refused to order the plaintiff to give particulars of times and places until the defendant had made an affidavit denying the seduction, as there was no evidence that the defendant would be embarrassed by the want of such particulars: *Thompson v. Birkley*, 31 W. R. 230); (3) that interrogatories ^{Interroga-}were allowed as well, but that they were limited ^{tories.} to the case which the particular party administering them intended to set up, and were not allowed when they went to a discovery of the case of the party proposed to be interrogated. A party

Can't see
opponent's
brief.

is not obliged to answer as to what relates to his own case, for "his adversary is not allowed to see his brief." He can only get at what assists him, not what assists the other side. These are fishing interrogatories.

Exception.

The only exception to this rule is that in an action by executors against the makers of a promissory note given to the testator, where the defendants plead payment to the testator, the executors will be allowed to interrogate as to the time place and circumstances of such payment: *Wells v. Watts*, L. R. 9 C. P. 688.

Payment
into Court.

But where the defendant's object is only to pay money into court in satisfaction of the plaintiff's cause of action, he will be allowed to interrogate the plaintiff as to the particulars of the damage sustained by him: *Horne v. Hough*, L. R. 9 C. P. 135.

Valua-
tions.

Again, a valuer cannot be interrogated as to the basis of his valuation if an umpire; if only one of the two preliminary arbitrators he can: *Turner v. Goulden*, L. R. 9 C. P. 57.

Things in
issue.

It is of the things in issue alone that discovery can be had, and not of the evidence which supports such issues. Where a plaintiff has set up a particular right, and part of his evidence to establish that right would be to show that it has been actually enjoyed, the defendant will not be allowed to interrogate him as to specific instances in which that right has been enjoyed, because these instances are not in issue, but only evidence of the right which is the issue between the parties. The names of witnesses cannot be asked nor plans, made during litigation by a party to defend himself with, seen by the other

side, nor title deeds in an action for the recovery of land, except under certain circumstances; for if so, the case alleged might be made out or more firmly established by them alone.

No party is entitled to see any document that does not tend to make out his case; the reason being that discovery was invented by Courts of Equity to relieve a party to an action at law, who formerly could not give evidence in his own case, by giving him a right to see the documents which would help his case, but no other. Reason of invention of discovery

As to documents under the Ballot Act, the rules with reference to which are practically the same as in other cases, see *Stowe v. Joliffe*, L. R. 9 C. P. 446. Ballot Act.

The ordinary rules of discovery apply to patent actions notwithstanding the provisions of the Patent Law Amendment Act as to the delivery of particulars. Thus where in an action for infringement the defendant stated that the inventions had been used by certain persons before the patent had been taken out, the names of the persons can be asked for by interrogatories: *Birch v. Mather*, L. J. Notes, Jan. 27, 1883, p. 8. Patent Act.

From what has been said upon discovery and interrogatories, it will be seen that they are both part and parcel of the same proceedings and that discovery may be required and obtained by interrogatories. And further that every party to an action has the right to exhibit interrogatories in order to obtain discovery of the facts upon which

Conversations.

the other party relies to establish his case, but not of the evidence which he proposes to adduce, and that he need not give the names of the witnesses whom he intends to call at the trial. Cotton, L.J., in the considered judgment of the Court of Appeal, in *Eade v. Jacobs*, 3 Ex. D. 337, says that only the substance of conversations need be set forth in the answers, and that too only where such conversations fall within the line set up by the pleadings. He says also that the onus of proof lies upon the person who applies to strike out interrogatories, and that it is the *prima facie* right to administer them.

Recollection of written documents.

In a recent case, *Dalrymple v. Leslie*, 8 Q. B. D. 5, which was an action for libel, it was held that a party could not be compelled to state his recollection of the contents of written documents not in his possession. In that case a defendant, in answer to an interrogatory whether she had not written and sent letters to a third person making certain defamatory statements set out in the interrogatory, stated that to the best of her recollection and belief she never wrote any letter making the statements set out in the interrogatory, or that she ever made any of those exact statements;—that she did write a letter to the third person, but that she had no copy of it, and was unable to recollect with exactness what the statements that were contained in it were; and this was held to be sufficient.

Where some interrogatories bad.

If genuine interrogatories are mixed up with interrogatories which ought not to be allowed, the party exhibiting them should be able to show that those which ought not to be exhibited are exceptional only, or a judge may disallow them *en bloc*: (Court of

Appeal), Kelly, C.B., and Mellor, J., in *Allhusen v. Labouchere*, 3 Q. B. D. 656.

The way to take objections to particular inter- Irrele-
rogatories, on the ground of irrelevance, or because vance.
they seek discovery of the other parties' evidence, is in the affidavit in answer. The words "exhibited unreasonably or vexatiously," in rule 7, have reference to objections with regard to the time or stage at which the interrogatories were exhibited, and such like objections. And therefore, objections on the ground of irrelevancy, or because discovery is sought of the other party's case, should not be taken by application to strike out, for neither of these grounds fall within either part of rule 7. This part of rule 5 relates only to the case of the whole of the interrogatories being unreasonably or vexatiously exhibited, or to particular ones which are scandalous: *Gay v. Labouchere*, 4 Q. B. D. 206. It is irrelevant in an action for specific performance by trustees for non-sale of A. to them, to interrogate them as to whether or not the purchase of A. would be a breach of trust: *Mansfield v. Childerbourne*, 4 Ch. D. 82.

If an interrogatory is too vague it may be struck When too
out. Sir R. Phillimore, in *The Radnorshire*, 5 P. D. vague.
172, struck out "Is there any act command fact matter or thing not disclosed in your answers to the above interrogatories which is material to the defendants to know for the purpose of defeating your claim in this action, or for the purpose of rendering you liable for all or some of the damage resulting from the collision mentioned in the statement of

claim? If yea, set it forth, state when it happened, and who can depose to the same." Whether the learned judge had in his mind the judgment of the Court of Appeal, *In re Ford v. Hill*, 10 Ch. D. 365, which decided that the requisition, "Is there to the knowledge of the vendors, or their solicitors, any settlement, deed, fact, omission, or any incumbrance affecting the property, not disclosed by the abstract," need not be answered, does not appear; but it is nearly as indefinite, and in effect an attempt to pick up by a general question at the end any details not asked for during the course of the examination by interrogatories.

Dates.

Dates may be asked in a case where prices may not, as for instance: Where a horsedealer sues an executrix for charges which are disputed, she alleging that he sold horses on commission for the deceased, he alleging the opposite. The issue was the course of dealing between the deceased and the horsedealer, and interrogatories as to the prices the horses fetched were of course not allowed, as not being material to this issue, but the dates upon which the sales took place were: *Rowcliffe v. Leigh* (referred to before). This was also the case in *Sheward v. Lord Lonsdale*, 5 C. P. D. 47, where a horsedealer sued the defendant for the price of three horses, and interrogated him as set out at length in that case. And see the judgment of Brett, L.J., in this case upon the points to which interrogatories can be directed: L. J. (C. A.) 42, 173.

**Applica-
tion for
further
answer.**

Finally, if a further answer is required, the application should be in chambers and not in court: *Chesterfield v. Black*, 13 Ch. D. 138, note, and should

specify the interrogatories or parts of interrogatories to which a further answer is required: *Anstey v. North and South Woolwich Subway Co.*, 11 Ch. D. 439; *Church v. Perry*, 36 L. T. 513. O. 10 however now just as O. 9 did before, expressly uses the words "motion or summons."

CHAPTER XI.

ADVISING ON EVIDENCE.

Proofs of
witnesses
formerly
used in
advising.

IN the old days evidence was advised upon in a very different manner to that in which it is at present. It was then the custom to send to counsel the pleadings, and also the proofs of the various witnesses; as for instance in an action for the non-delivery of corn, the proof of the plaintiff proving the sale, and also those of various witnesses showing the custom in the corn trade. Counsel could then say with authority whether or not evidence was required on such-and-such a point, or whether it was admitted on the pleadings, and also whether or not corroborative evidence upon it was required; as for instance as to the custom in the illustration given.

Evidence
should not
be ima-
gined.

In modern times however the habit has grown up of simply sending the pleadings to counsel, with the interrogatories and answers, if any. He then states what the issues between the parties are, and what evidence will be required to prove them. This is no more a proper course to adopt than to desire an affidavit to be drawn without furnishing the materials for it; all that the pleader can know is what he would like his witness to depose to, and not what the witness can truthfully volunteer.

Leading questions are not allowed in examinations Reason. in chief, and upon the same principle an affidavit ought not to be prepared by the draftsman and put before a witness. He should be asked what he has to say upon such-and-such a point, and his answer afterwards put into the proper form for an affidavit.

In an action in which the evidence is by affidavit, an outline of the proposed affidavit of each witness should be sent, and it should not be expected that a sketch of the affidavit a witness should be got (if possible) to swear will be prepared by the draftsman. An ignorant witness, and often others who are not ignorant, will swear any affidavit which is handed to them, thinking that it must be all right if their lawyers put it before them; and after having had the document read to them, they incorporate its terms with their own real recollection of the matter, and cannot afterwards separate the two.

Although the recommendation of the Law Society's Issues settled by judge. Committee, upon the Report of the Lord Chancellor's Legal Procedure Committee, which seems a very sound one, has not been adopted, viz., that after issue joined an application should be made to a judge to settle the issues; yet the notice to admit specific facts under Order 32 ought to work well even alone; and so the questions actually disputed will be much fewer in number, and the advising on evidence a simpler matter than heretofore. On the other hand Summons for directions. although the issues are not to be settled by a judge as was proposed, it would also appear that they do not either come into the summons for directions notwithstanding that this has now become an institution. If the attempt which is now so evidently being made to render litigation less expensive

is honestly persevered in, it would appear that advising on evidence will be oftener dispensed with for the reasons before stated than it has been formerly.

Expense of affidavits.

Indeed it is difficult to see why the provision made by **Order 37, r. 1**, will not be more generally used, namely, that the Court may at any time for sufficient reason, order that any particular fact or facts may be proved by affidavit. This would of course in many cases lessen expense, as under **rule 2 of Order 38** the costs of any affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter or copies of or extracts from documents have to be paid by the party filing the same. This rule was acted upon by Kay, J., in *Hirst v. Procter*, 1882 W. N. 12, where the affidavits of both the plaintiff and defendant set out the contents of written documents.

When thrown on party filing.

And again in *Walker v. Poole*, 21 Ch. D. 835, the same learned judge ordered an affidavit as to documents made by the defendants setting out a very large number of letters instead of referring to them in bundles properly identified to be taken off the file, and the costs to be paid by the defendants.

Instances.

In *Cracknall v. Janson*, 11 Ch. D. 1, Fry, J., directed the taxing master, under rule 18 of Order 6 of the Additional Rules of Court, 1875, to look into and disallow the costs of affidavits of unnecessary length; and the same learned judge in the same case held that the Court has power to strike out scandalous matter from an affidavit, or to order the person who has filed it to pay the costs of it on the application of any person even a stranger to the

action, or mero motu. Vice-Chancellor Hall too in *Perpetual Investment Society v. Gillespie*, 1882 W. N. 4, refused to allow the costs of an unnecessary affidavit.

Under rule 3 affidavits have to be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory applications, on which statements as to his belief, with the grounds thereof, may be admitted; but *Gilbert v. Endean*, 9 Ch. D. 260, decided that, in proceedings which finally decide the rights of parties, evidence on information and belief must not be admitted, although the proceedings are in their form interlocutory. More however will be found upon this subject in the chapter upon "Affidavits."

Evidence on information and belief when admissible.

Where the production of a witness for cross-examination is bonâ fide desired, his evidence cannot be given on affidavit (Order 37, r. 1), and a Court cannot order an affidavit to be read at the trial which has been used on a previous occasion, when the production of the witness for cross-examination is insisted upon: *Blackburn Union v. Brooks*, 7 Ch. D. 68. It has been held that when a party improperly withholds his consent to the use of affidavits, he must pay the costs of an unsuccessful application by the other party to use them: *Patterson v. Wooler*, 2 Ch. D. 586; and a consent to take evidence by affidavit may be given even by a guardian ad litem: *Knatchbull v. Fowle*, 1 Ch. D. 604; but such agreement must always be express, and not to be gathered only from the correspondence between the parties. In advising on evidence it is well to state wherever there is any difficulty which side will

Cross-examination.

Agreement to take evidence by affidavit.

have to begin, and in fact upon whom the burden of proof of the various issues lies.

As to the right of a respondent to insist on having his evidence heard, see *Ex parte Jacobson*, *In re Pincoffs*, 22 Ch. D. 312.

Right to
subpoena.

When advising as to what witnesses should be called it must be remembered that the late case of *Raymond v. Tapson*, 22 Ch. D. 430 (C. A.), decided in so many words that any party may without leave of the Court issue a subpoena for the examination of a witness at any stage of an action; although the Court will not allow the privilege to be used oppressively. For example, a solicitor who acts for both parties in a mortgage transaction can be examined as to the moneys received by him on account of both parties. See page 193, and O. 36, r. 38.

As to the expenses of witnesses see O. 37, r. 9, and O. 38, r. 28, as to their expenses on cross-examination.

CHAPTER XII.

AFFIDAVITS.

AFFIDAVITS may be used upon all motions, petitions, and summonses; but the attendance for cross-examination of the persons making them may be ordered upon the application of the other side: General Order 37, Aug. 7, 1852, and Consolidated Order 19, r. 9. If however an affidavit is filed by a plaintiff in support of an application for leave to amend a writ of summons, where the right is clear the defendant cannot cross-examine upon it for collateral purposes: *M. R., Conybeare v. Lewis*, 44 L. T. 242. When deponent cannot be cross-examined.

Where there is no object to be gained by cross-examination, except to subject a person to annoyance, leave will be refused: *Raymond v. Tapson*, 22 Ch. D. 430; *Fenton v. Cumberlege*, W. N. 1883, 117. See, too, O. 36, r. 38.

Although at the trial of any action or at any assessment of damages, witnesses except by consent (who should not be unreasonably refused: *Patterson v. Wooler*, 2 Ch. D. 586) must be examined *vivâ voce*, any particular fact or facts may be ordered to be proved by affidavit, and any witness may be examined by leave and his depositions used at the hearing, unless the other side *bonâ fide* desires his production for cross-examination, and he can be produced. Consent.

Difference between practice in High Court and in Bankruptcy. In the High Court a deponent can be cross-examined even if his affidavit is not used by the party who files it, but in Bankruptcy if the affidavit is not used he cannot be cross-examined upon it: *Ex parte Child*, In re *Ottaway*, 20 Ch. D. 126.

Withdrawal of affidavit. And a deponent cannot withdraw an affidavit to avoid cross-examination, because if he could the course of justice would be brought into contempt by allowing a person to file evidence which if there is no cross-examination makes in his favour, but which he knows will break down on cross-examination; and then to withdraw it if he finds that cross-examination is threatened: In re *Quartz Hill, &c. Co.*, *Ex parte Young*, 21 Ch. D. 646. This applies to any witness and not only to the parties to an action. As to the right to cross-examine by the petitioners in a winding-up petition, see Chitty, J.'s, remarks, In re *The London Fish Market, &c.*, Solrs. J., July 7, 1883, p. 600.

Incriminating questions. Where a witness refuses to answer a question upon the ground that the answer might tend to criminate him his mere statement of his belief is not enough, but the Court must be satisfied from the circumstances that he has reasonable ground for his apprehension. But if it is once made to appear that the witness is in danger great latitude should be allowed to him in judging for himself the effect of particular questions. Otherwise the judge is bound to insist on his answering: *Ex parte Reynolds*, In re *Reynolds*, 20 Ch. D. 294. This rule as to a witness refusing to answer questions in cross-examination must not be confounded with that as to the answering of interrogatories. See p. 174, and *Lamb v. Munster*, 10 Q. B. D. 110.

Every affidavit must be filed in the central office, **Filing.** and show on whose behalf it has been filed. It consists of three parts:—the title, the statement of **Title.** facts, and the jurat. It should be entitled in the division in which it is to be used, and in the cause or matter or both in which it is made. See, however, O. 38, r. 2, and 68, r. 4. An affidavit chiefly errs by containing irrelevant matter. Nothing should be inserted which it is not necessary to prove, because some exception may be taken to it by the judge, and the costs disallowed; or if not, an answer **See p. 190.** may be put in to the unnecessary part which may damage the case of the party who filed it, while as being irrelevant matter it can have done no good.

In proceedings which finally decide the rights of parties, evidence as to information and belief is not admissible, though their form is interlocutory, if the objection is taken by the other party; but on other interlocutory motions such evidence is admissible. In applications of the latter kind the Court must act upon such evidence, because no other is obtainable at so short a notice, and their general effect is rather to keep things in statu quo till the Court can decide the rights of parties than to decide them themselves. **Information and belief.**

Deponents should however never give evidence of matters not within their own knowledge unless they have actually been informed as to and believe the truth of the statements they are making. For example no evidence should be given of the state of mind of another person, and if it is given it cannot be used as evidence either for or even against the person in whose favour it was filed. No one can know the state of mind of another person. This is not a fact to which information and belief apply. **Evidence as to facts only should be given.**

Rhetoric. Rhetoric should be avoided in an affidavit as in a pleading.

Contents. Every affidavit must state the description and true place of abode of the deponent, and a false description may be most material. See *Ex parte King*, L. R. 7 C. P. 77.

By illiterate persons. The names of the persons making it must be inserted in the jurat, unless they all swear to it at the same time, when it is enough to say, that it was sworn to by the "above-named" deponents. It should not contain any alterations, unless initialed by the officer taking it. In the case of an affidavit by an illiterate person the officer taking it shall certify in the jurat, that it was read to the deponent, who seemed perfectly to understand it, and that he affixed his mark to it in his presence. O. 38, rr. 9, 12 and 13.

When jurat not signed by officer. An office copy of an affidavit may in all cases be used and parties showing cause against a rule should take office copies of the affidavits upon which it is moved: In re *Chaffers*, L. R. 8 C. P. 376. If the officer before whom it is sworn omits to sign the jurat the fault cannot be amended afterwards so that an indictment for perjury might lie in respect of it if untrue: *Ex parte Heymann*, L. R. 7 Ch. 488.

Before whom an affidavit cannot be sworn. Where the plaintiff's London solicitors, who were his only solicitors on the record, employed a firm who happened to be his country solicitors in getting up evidence, and the business was done entirely by one of the partners in the country firm, but some of the affidavits filed on behalf of the plaintiff were sworn before the other partner, such affidavits were held to be inadmissible: *Duke of Northumberland v. Todd*, 7 Ch. D. 777. Nor can they be taken before a clerk

to the solicitor on the record, although he may be a commissioner. O. 38, rr. 16 and 17.

The principle would seem to be that the commissioner should avoid the suspicion of being interested. In the case of an affidavit sworn abroad, it must be shown that the person before whom it purports to have been sworn is, according to the law of the country within which it is sworn qualified to administer oaths, and his signature must be verified. Small defects may be cured, as In the matter of *Howard*, L. R. 9 C. P. 347; In re *Edsall*, L. R. 10 C. P. 472; In re *Coldwell*, L. R. 10 C. P. 667.

In the case of a witness whose attendance in court is dispensed with, the deposition is taken before a ^{Exam.} ^{ner.} commissioner or examiner, and the evidence should be taken down by the examiner in his own writing, headed: "In the matter of, &c. A.B. (the witness), being called and duly sworn, deposed—I, &c." If, however, the examiner does not take down the evidence himself, both parties being present, and neither of them objecting then, no objection can afterwards be entertained, and the affidavit will be O. 37, r 6 ordered to be filed. The evidence should afterwards be kept in the possession of the examiner, until it is filed by him himself. As to who may be present at a special examination, see In re the *Georgia Land Co.*, Solrs. J., May 5, 1883, p. 449; see p. 200, and O. 37, rr. 5, 25.

When there has been a formal valid written con- Time sent between the plaintiff and defendant to take the evidence at any trial or assessment of damages by affidavit, the affidavits shall be filed within fourteen days from such consent, unless it is extended or a

judge in chambers allows further time, and a list of them must be sent by the plaintiff to the defendant. The defendant has fourteen days, which can be extended in the same way, within which to answer them, and he must send a list of his affidavits to the plaintiff. And as to when evidence is to be given by affidavit, see O. 37, r. 1, and O. 38, rr. 25—30.

Vivâ voce
evidence
must be
expressly
excluded.
Conduct-
money.
O. 38, r. 28

Within seven days, if the time is not extended, the plaintiff must file his affidavits in reply, and these affidavits should be confined to matters strictly in reply, but they need not address themselves to the defendant's case alone, and they may supplement the original case; of these too he must furnish a list. If the consent between the parties did not in terms exclude vivâ voce evidence, a deponent to an affidavit can supplement it by vivâ voce evidence at the hearing. Any deponent can upon proper notice be brought to the trial to be cross-examined, and conduct-money need not be tendered him, as it must be to one who is a party's own witness. An affidavit must be true in substance, and all necessary circumstances of time place manner and other material incidents must be included in it. It must be sufficient in itself, or else all the affidavits used must be together sufficient to sustain the case made by the application, of which it or they are the groundwork. For example, in an affidavit of service upon which it is intended to found an application for attachment, good service must be fully proved as well as the plaintiff's name, that of the Court, the return of the writ, Relevancy. and all things material to the application. In a word it must be pertinent material and not prolix or scandalous, O. 38, r. 11; but it may require very minute investigation of the pleadings and careful examina-

tion of them with the affidavit to decide whether or not the allegations objected to are fairly relevant to the issues in the action : *Warner v. Mosses*, 19 Ch. D. 74. And the costs of affidavits which unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, will have to be paid by the party filing the same.

Order 37 and Daniel's Chancery Practice were the authorities upon affidavits, and O. 38 now contains all that it is necessary to know about them. It need only be added that after a writ has been issued, if a material witness is taken seriously ill or proposes to go abroad, an application should be made, under Order 37, r. 1, for leave to take his deposition.

~ If the witness is desirous to go abroad, it is possible that some difficulty may occur as to taking his evidence before an examiner, should the other side object : *Stewart v. Gladstone*, 7 Ch. D. 394 ; but if the witness seems likely to die, there would be no doubt of the propriety of this course, and his evidence could always have been read at the hearing ; as at a new trial his former evidence could have been put in if he did die, whether the other side objected or not. It was held, in the late case of *Hanover v. Homfray*, 19 Ch. D. 224, by the Court of Appeal that evidence taken de bene esse in a former suit by parties who were respectively privies in estate, was evidence in a second suit, the issue of the suits being the same. In that case evidence de bene esse taken in 1815 was ordered to be read in 1881. The principle would seem to be, that in a proper case a witness will be allowed to give his evidence before an examiner, provided the other side have all proper opportunities of cross-examining him upon the evidence so given.

Witness
going
abroad.

Evidence
de bene
esse in a
former
suit.

Party
examined
has a right
to have
counsel
and solicitor
present.

And with reference to the examination of a witness before a special examiner, or indeed the examiner for whatever purpose the examination is conducted, the witness has the right to have counsel and solicitor present on his behalf during the examination, and to be re-examined although only for the purpose of explaining his examination-in-chief. An authority for this in the case of a person examined under the Companies Act, 1862, s. 105, is *In re Cambrian Mining Co.*, 20 Ch. D. 376, where the judgment of Hall, V.-C., deals with the subject at length. See p. 197.

Copy of
depositions
when
given to
witness.

The Court has a discretion whether to give a copy of the shorthand notes of the depositions of a witness examined under the Bankruptcy Act, s. 96, to him or not; but where a creditor had been so examined he was allowed a copy in *Ex parte Pratt*, *In re Hayman*, 21 Ch. D. 439.

When
commission
will
not issue
to examine
witness
abroad.

A commission may not be issued to a foreign Court to examine a witness abroad if it appears that under the procedure of that Court he will not be cross-examined in the ordinary way: *In re Boyce*, *Crofton v. Crofton*, 20 Ch. D. 760.

Single
commissioner

When a single commissioner is appointed to take evidence abroad, the commission should authorize him to administer the oath to himself: *Wilson v. De Coulon*, 22 Ch. D. 841.

CHAPTER XIII.

TRANSFER AND STAY.

THERE has been a growing tendency on the part of the judges to discourage the transfer of actions for some time past, and *Storey v. Waddle*, 4 Q. B. D. 290, is perhaps the leading case on the subject. There the plaintiff commenced an action in the Queen's Bench Division, complaining that the defendant had committed acts of trespass by passing over the plaintiff's land to an adjoining high road, and he also claimed an injunction and damages. The defendant pleaded that on the occasion of the purchase of some land by him from the plaintiff in 1874, he had agreed to grant him a right of way over the land in question, which right of way ought to have been included in the conveyance, and he claimed to have the same rectified by the insertion of a grant of such right of way. Further, by counterclaim, he claimed specific performance of an alleged agreement by the plaintiff to sell him another piece of land adjoining that originally sold. After the delivery of this defence and counterclaim the defendant applied in chambers for a transfer of the action to the Chancery Division. The case was carried to the Court of Appeal, each Court being against the applicant; although it was urged for him that the Chancery Division alone has the requisite machinery for dealing with such matters as the

Two objections to transfer.

rectification of a deed and the specific performance of a contract; as by sec. 34 of the Judicature Act, 1873 actions for relief of that nature are expressly assigned to the Chancery Division; and that when such relief is prayed in a counterclaim, the Court would only be following the spirit of the Act in transferring the action to the same division. It was further urged that such a transfer had been made in a similar case. Without calling upon the plaintiff's counsel, the Court said that it would be acting contrary to the principle that each division of the Court is to determine everything which arises in a matter which comes before it, if it granted the application. Another objection that was taken by the Court was, that if such a transfer as this was allowed, any defendant might put in a counterclaim for the specific performance of some agreement, and then apply for a transfer, so that the defendant would practically have the choice of the forum in which his opponent's claim should be tried.

Consent of presidents.

The latter does not seem to be a very strong objection, for if the counterclaim set up was found to be fictitious, the Court would have ample power to punish the defendant in costs. The real reason it is submitted why a transfer is looked upon with disfavour is that first stated, viz., that every division of the Court is now to have full power to determine every thing, and to give any relief that may arise even incidentally in the course of an action. The consent of the presidents of both the divisions, from and to which the transfer is proposed to be made, must be obtained before the application can be entertained; and it is very likely that such consent will not now be freely given, so that a transfer of this kind now may not often be found to be practicable.

See also *Ladd v. Puleston*, 31 W. R. 539. On appeal, W. N. 1883, 127.

It was stated in *Clements v. Norris*, 1878 W. N. 4, ^{Where there are issues of fact.} by Hall, V.-C., that it was the opinion of the judges that where issues of fact were going to be tried before a judge and jury, that it would be more convenient to transfer the whole action to the judge who was to try the issues.

In such a case the defendant would have a right to have the issues under his claim tried before a judge and jury if he desired it; and in order to avoid two trials of the same action, the whole action would probably be transferred, as mentioned by the Vice-Chancellor, and the action can be set down in Middlesex. ^{See next page.}

A more important case of an application under Order 51 however is, when there has been a winding-up order or an administration suit instituted, to have an action pending in any other division brought by or against the company, or by or against the executors or administrators of the testator or intestate whose assets are being so administered. The transfer is made by the Lord Chancellor in the case of an action pending in another Court of the Chancery Division: see *In re Madras Irrigation Canal Co.*, 16 Ch. D. 702; but in the case of an action in a Common Law Court an application might be made *ex parte*. In the case of administration, the action must of course be against the executor *qua* executor, and not in his private capacity, although an action against him personally for a *devastavit* will be transferred: *In re Timms*, 26 W. R. 691. ^{Winding-up administration.}

An order to transfer an action against a company which is being wound up into the Chancery Division may be made *ex parte*: *United Kingdom Electric Telegraph Co.*, 29 W. R. 332. ^{Ex parte applications.}

Chancery action to be tried by jury. Moreover when an action is to be tried by a jury it is now usual to transfer it to the Common Law Division: In re *Martin Hunt v. Chambers*, 20 Ch. D. 371.

Stay. As to a stay of proceedings pending appeal, see p. 293; but an order to stay one of two cross actions between the same parties out of the same matter is made under Judicature Act, 1873, s. 24, sub-s. 7. In such a case the action brought against the party on whom the burden of proof lies ought to be stayed, and the action brought by him ought to be allowed to proceed, the other party to the litigation being at liberty to raise by defence set-off and counter-claim all questions intended to be raised by him in the action which is stayed: *Thompson v. South Eastern Ry. Co.*, 9 Q. B. D. 320.

This jurisdiction is not exactly to consolidate actions but to prevent the multiplicity of them by directing that instead of their being two actions between the same parties there should be only one. The right to the first word and the last is however often considered of such importance that an application to stay one of two cross actions is vigorously opposed.

Two actions, one abroad. Where however the actions are in personam it is no ground for staying proceedings in an action in this country that there is another action pending in this country and also an action in a foreign country, the former partly and the latter wholly relating to the same subject-matter: *McHenry v. Lewis*, 21 h. D. 202. See, however, the same case on appeal, 1 Ch. D. 397.

This is sometimes called the doctrine of double taxation, and the first thing that the Court will look in stopping an action is whether any injustice is worked by so doing. The notion is that if a man

brings an action he does so at the risk of having to pay the costs of the action, and this is generally sufficient protection for the defendant. If an action is absurd and merely intended to annoy, or if it is vexatious, as if the plaintiff fancied that he would get an advantage by proceeding in two Courts at once, the Court has perfect jurisdiction to stay it. If however there are substantial reasons for bringing two actions, as for example one in this country and one in another, this is not vexatious. Actions should relate identically to the same subject-matter for one to be stayed, and one cannot be stayed simply because it is brought under the same title as another.

A plaintiff must not be put to an election as to part of an action; an action if stopped must be stopped in toto: Jessel, M.R., in *The Peruvian Guano Co. v. Bockwoldt*, Sol. J., 275, Feb. 24, 1883. As to part of an action no stay.

As to staying further proceedings in a second action until the costs of the defendant in the first action have been paid, see *Randle v. Payne*, Solrs. J., March 24, 1883, p. 346. The rule is that the prior action must have been for the same purpose and against the same defendant, and must have been dismissed with costs. The rule applies also to actions by married women. Costs of former action unpaid.

The trial of issues of fact in an action will not be stayed by the Court except for very strong reasons pending an appeal on a point of law: (C. A.) *In re J. B. Palmer's Application*, 31 W. R. 33; 22 Ch. D. 88. Where appeal on point of law.

As to what Court an application should be made to stay proceedings for costs pending an appeal after dismissal with costs, see *Otto v. Linford*, 18 Ch. D. 394. For an instance of when the application must be to the Court of Appeal, see *Wilson v. Church*, 11 Ch. D. 576. To what Court.

Conduct. As to who shall have the conduct of an action after consolidation has taken place, see *Zumbaco v. Cassavotte*, L. R. 11 Eq. 439, and *Harrison v. Richards*, L. R. 1 Ch. 473; where a plaintiff unfairly obtained an advantage, *Rhodes v. Barret*, Ex parte *Singleton*, L. R. 12 Eq. 479. All these cases were before the Judicature Act. Among the late cases, see particularly *In re Swire*, *Mellor v. Swire*, 21 Ch. D. 647. Of course the general rule is that where two actions have been commenced for the same purpose (as the administration of the same estate) the conduct of the proceedings will be given to the plaintiff in the first action. In the case last quoted the fact of the plaintiff being a stranger to the family who had bought up the reversionary interests of some of the residuary legatees was held not to be a sufficient reason for not giving him the conduct, though his purchase was partly impugned for want of consideration and undue influence.

General rule.

On death of plaintiff. As to the conduct of actions generally, see **O. 16, r. 40**, and as to who may have the conduct on the death of a plaintiff, see *In re Delaney*, *Delaney v. Delaney*, Solrs. J., April 21, 1883, p. 418.

Conduct of sale. The conduct of sales and such like proceedings after a judgment does not come within the scope of this treatise, but it may be observed that a sale will generally be intrusted to the parties interested in obtaining the largest price for the property, at all events in foreclosure actions. See *Wooley v. Colman*, 21 Ch. D. 169, and *The Manchester and Salford Bank v. Scowcroft*, Solrs. J., June 2, 1883, p. 517.

Liberty to attend. As to when liberty to attend proceedings will be granted, and when the applicant should be made a defendant, see some remarks of Chitty, J., in *Conybeare v. Lewis*, Solrs. J., April 21, 1883, p. 419.

CHAPTER XIV.

THE BRIEF.

ALTHOUGH the way in which the brief is prepared is entirely in the discretion of the solicitor, the way in which it is used is as entirely in that of the counsel engaged in the action, and it is proposed to consider it from both points of view.

It is a great pity that the costs of drawing a brief should depend upon the length to which it has been spun out, as the work expended upon it is often in the inverse ratio to its size. Especially since all pleadings over ten folios in length have had to be printed, there is no excuse whatever for the lazy habit of making up great part of the brief by copying them, or at least saying over again in the brief what has been said already by the pleader. The opinion on evidence should accompany the brief as well as the pleadings interrogatories and the answers thereto, and copies of the various documents referred to in it, letters and notices to admit and produce, &c. And here again, if the solicitor has only done his duty at the right time, namely by drawing proper proofs of the witnesses' evidence, or better still the brief itself to send as instructions to advise on evi-

Payment by length wrong system.

What documents should accompany.

dence, it will be to his advantage, as they will be ready to append to the brief. This document itself should be an exhaustive statement of the client's case, and an index or analysis of names dates and the important steps in it, is its best introduction.

What brief
should con-
tain.

Advantage
of analysis.

If this analysis is in a skeleton form and written wide it catches the eye at once, and forms a document which the counsel employed should otherwise manufacture for himself. The brief ought to tell its story in the order of time, and especially in the case of the proof of a witness there should be no attempt made to arrange his statement according to any other order. In a word, the order of time is the only one which is not confusing, and that can be universally adopted, and no other arrangement is as practicable.

Rhetoric
often dis-
advan-
tageous.

In drawing a brief with reference to the client's case there is no necessity, and indeed it is unwise, to treat it as a very hard one. The advocate, from reading a brief, necessarily adopts to a certain degree the language of the brief, and may draw down upon himself the remark made by the late Master of the Rolls in *Ex parte Moir*, *In re Moir*, 20 Ch. D. 63: "I have often lamented that there is not a forensic term for impudence. If there was I should apply it to the appellant. He has allowed his counsel to talk of the order made against him as being oppressive." This does not advantage the client's case at all, and counsel should not be expected or indeed asked to push a case to an extreme degree. Whatever is exaggerated is weakened.

When the client's case has been finished, any observations that may be thought useful as to the case

of the other side should then be made. The solicitor may know the line he proposes to go on, and if so, some intimations upon this cannot but be useful.

If any suggestions can be given as to the cross-examination of any of the adversary's witnesses, they are better made on paper than *vivâ voce* in the course of the case; but the main duty in the preparation of the brief is the getting up the client's case thoroughly, rather than the attempting to deal with the supposed case of the opponent. One very simple reason why this is so is the fact that the opponent may adopt a line of defence which has never been foreseen, and then such speculations as have been referred to will have been mere waste of time. In an action with pleadings this is possible to a certain degree, as from them it can be seen of what facts alone he can offer evidence; and in County Court cases, where there is a special defence, it is competent for the plaintiff to speculate with tolerable accuracy as to what the defendant's case is, and the defendant will always know that the plaintiff has to prove his claim; but where no defence is put in, it is almost waste of time for the plaintiff's solicitor to form conjectures as to what the defence is. His energies would be better devoted to getting an accurate and thorough knowledge of what each of his own witnesses can prove, in fact to building up his own case.

Suggestions for cross-examination.

Building up own case.

It not unfrequently happens that the notion—fascinating because so easy—of masterly inactivity—believing that his own strength consists in his opponent's weakness—takes such a hold of him who prepares the brief, that there has been no analysis of

What not a good course to adopt.

the case made by him, and consequently the witnesses' evidence has not been tested upon many important points, and the answers, instead of appearing in the proof, have to be got by the counsel at the hearing for the first time at his own risk. If this is supplemented by the delivery of the brief upon the morning that the action comes on for hearing, as it sometimes is, the client's case is rather weakened than assisted by the intervention of the very man who could have done so much for it, namely, his own solicitor.

**Time for
delivery.**

Every brief should be delivered two or three days at least before the action gets first into the paper, and then proper prospective arrangements can be made by counsel or his clerk for attending to it; and those men who are in large practice would be able to attend to their cases more invariably than they now can. The brief should always be delivered a sufficient time before the conference is fixed to enable it to be read, and at the conference the attention of counsel should be drawn to any matters that may have been subsequently learnt, and to what seem to be the weak parts of the case, judging from the proofs of the witnesses already obtained, and the demeanour of the witnesses themselves. The latter can only be known at that time to the solicitor, who should have seen them personally.

Costs.

What costs will be allowed for instructions for brief and conferences will depend upon the nature of the case itself, and will be entirely in the discretion of the master, unless the principle upon which he has gone is a wrong one. Thus, on the taxation of the costs of a petition under the Parliamentary

Elections Act, 1868, the master in taxation of the petitioners' costs disallowed fees for consultations during the trial. He was directed to review his taxation in that respect; but when he disallowed a moiety of the charges paid to the under-sheriff on the trial, the Court declined to interfere: *Tillett v. Stracey*, L. R. 5 C. P. 185. And in *Wegmann v. Corcoran*, 41 L. T. 792, the fees paid on a second consultation held pending the hearing of an appeal were disallowed. The rule in fact is that in ordinary cases one consultation fee only is allowed: *Smith v. E. of Effingham*, 10 Beav. 378. Care must be taken that the costs of drawing and copying briefs and preliminary inquiries are not incurred before notice of trial has been given or they will be held to have been prematurely incurred, nor any extraordinary or unusual expense through too great caution or any special desire to insure success. Such costs would not be allowed as between solicitor and client; nor of course such as have been incurred through default negligence or mistake. No general rules can be given here as to what amounts will be allowed; but nothing that seems unnecessary, or that could be avoided, should appear in the bill, as it prejudices the master and makes him disposed to exercise his discretion in matters that are purely discretionary against the bill. Retainers are not allowed on a party and party taxation: *Green v. Briggs*, 7 Hare, 279. See Hints to Solicitors, p. 168. 0. 65.

All parties that have common interests should appear by one counsel, and the costs of two or more briefs will not be allowed where one would have been sufficient: *Eden v. Naish*, 7 Ch. D. 787; but the costs of two counsel, one Q. C. and one junior,

are at present allowed in almost every case, except those especially excepted by O. 65, and in a very complicated case even three have been allowed: *Kirkwood v. Webster*, Fry, J.'s, judgment, 9 Ch. D. 242.

No book
on drawing
a brief.

It is a somewhat strange thing that there is no book in general use which deals with the way to draw a brief. Except from the traditions of the offices in which he has been brought up—an uncertain kind of unwritten law at best—it is difficult to see where the young solicitor is to gain information upon this important branch of his duties. Even in Daniell's

Ed. 6, 689. Chancery Practice the subject is passed over in a short note. The importance of the subject must be apparent at first sight, and this want has been fre-

quently felt; but the difficulties of the way to supply it are almost a sufficient excuse for the lack of written authority at present existing upon it. It is almost impossible to do more than give the barest outline of the way in which the duty should be approached. The infinite variety of circumstances attending its exercise make it next to impossible to suggest general rules of anything like universal appli-

Object of
drawing
brief.

cation. The fundamental principle which actuates him who draws a brief should be to give him who has to use it such help as he will require at the hearing which he cannot secure for himself from a perusal of the pleadings. If therefore the opinion on

Opinion on
evidence.

evidence forms one topic that the brief deals with but very little more need be said about the pleadings, which should often accompany it even in interlocutory applications. Whether they should accompany or not will of course depend upon the view taken by the taxing master in each particular case, and there is no general rule that copies are not to

be allowed upon a interlocutory application. The Costs.
 only general rule which exists with reference to the
 costs of the documents which should accompany a
 brief is that the costs only of such as are necessary
 or proper for the attainment of justice (See **Order 65**)
 will be allowed. It is not proposed here to go
 into the question of costs. Some remarks will be Rules as to
 found upon this subject in Hints to Solicitors, p. 178; costs.
 but it is only from the cases which have decided
 what costs should be allowed (as for instance those
 of shorthand writers' notes) that we can learn what
 documents should accompany a brief.

In a party and party taxation the costs of all When
 things which were necessary for the proper conduct copies of
 of an action are allowed but not such as are only pleadings.
 luxuries. Therefore at the trial of every action in
 which there has been pleadings a copy of the plead-
 ings should accompany the brief, and to facilitate
 their use the opinion of evidence as well; but in an
 interlocutory application it is possible that the form
 of the pleadings may be immaterial, and in such a
 case their costs would not be allowed.

The same remark applies to copies of documents Letters.
 and letters which have passed between the parties
 or which bear upon the subject of the action. Any-
 thing which tends to throw light upon the subject
 of the action should of course be furnished to counsel,
 and his attention should be specifically drawn to
 important letters or documents in the brief.

The order of arrangement is of the greatest im- Order of
 portance as has been before pointed out, and no order arrange-
 is so good as that of time. As after all the weight ment.

of evidence is that which should concern the solicitor more than the law of the case, for which the counsel employed is primarily responsible, too great pains cannot be taken to ascertain the real feelings and bias of the witnesses, and any suggestions to counsel upon these points should form the main part of the brief in witness cases. Where the evidence is taken by affidavit, an analysis of the case is nearly all that is required.

**Negli-
gence.**

It only remains to be said that a solicitor is theoretically guilty of negligence if he does not instruct counsel properly. The case of *Hawkins v. Harwood*, 4 Exch. 503, clearly shows that he should be put into such a situation both with respect to the information given him and the means of making it available as will enable him to conduct the case properly. See *Hints to Solicitors*, p. 107.

**The advc-
cate's
duties**

As regards the way in which a brief should be used, it must be plain that this is not the same without a jury as with one. The practice has been to convince the judge if possible, but in any case to use every effort to convince the jury—and to effect the latter many things were done which are useless when the judge's opinion only has to be gained.

**Mode of
addressing
a jury.**

For example, an eminent advocate is known to have got a verdict of not guilty for a receiver of stolen goods by simply harping upon the words "*well knowing*," which occur in the indictment. This would have little effect upon a judge, and any attempt at speech-making, unless very first-rate, is calculated to do harm rather than good. A first-

rate speech has its effect upon a judge, as upon A judge. every mortal, but anything short of this is labour thrown away. It is the weight of metal not the roar of the artillery which has the effect, though the one is sometimes mistaken for the other by a jury. Bluffness to a judge is unpardonable, as showing bad taste; indeed it is only not so bad as truckling and want of independence. Apparent self-consciousness of manner is also unfortunate, as suggesting the idea of the speaker continually thinking: "I wonder how I look now?" This defect often leads to forced attempts to say sharp things, which, if not natural, lack the charm of *jeux d'esprit*, and fall to the ground by their own intrinsic heaviness.

Mauvaise
honte.

The points of the case must be brought out in order. Each one must be proved; the propositions of law desired to be established must be clearly enunciated, and the authorities for them quoted in their proper order. The argument the speaker is going to adduce ought to be well thought out; and it should be seen that for one phase of a case a principle is not cited that pushed to its logical conclusion acts in the sequel adversely to the introducer. When this latter misfortune happens, the transparent shifts the speaker is put to when asked by the judge some such question as this, "Does not your argument go to prove so-and-so," mentioning the real and complete end of the argument, are productive of no good effect. At such times the attempts to "distinguish" are often unhappy and even trying to the patience. In *Gordon v. Great Western Ry. Co.*, 8 Q. B. D. 48, may be found an illustration in point. There the judge, Grove, J., said, "The learned counsel who argued for the defendants

Arrange-
ment of
address.

Argu-
ments
pushed to
their logi-
cal issues.

candidly fairly and well did not stop short of saying that under the conditions the company would not be liable for any loss however occasioned ; for any withholding though wilful and determined ; for any injury though by reckless and intentional acts of the company's servants. I think that would be an extravagant meaning to put on the clause." If a case is inherently weak the advocate cannot put the strength into it which it radically lacks. At all events, the logical mind of a judge will see at once the result of the reasoning, and therefore it is no good to labour at a point which is not in itself good. Again, a point properly taken need not be insisted upon. The attention of the judge once drawn to it is enough. The parable of the importunate suitor only applies to the case of an unjust judge, a species now extinct in this country.

Injudi-
cious per-
sistency.

An amusing incident occurred in the Court of Appeal once, through a suitor pressing a junior to ask the leader, who was speaking, to insist upon a particular point before that Court. The three learned judges who composed it upon that occasion were evidently not impressed by the arguments of the speaker, as it was a weak case, and had more than once as good as told him so. The suitor was anxious to eradicate the feeling against himself which he being in court noticed, by having what he thought a good point made over again. The leader turned round to the junior who was sitting behind him and observed, "It is unpleasant to have the three judges interposing a front ; but that is nothing to your present interruption, which is senseless." And a story is told from which much may be learnt. A junior in Chancery, one of whose duties is to take a full note of the

evidence (Lush, L.J., *E. De la Warr v. Miles*, 19 Ch. D. 83), being requested to press the case as much as possible, was going over the ground which his leader had taken, but was at length interrupted by the judge, who said, "Your leader has told us all you have said as yet, except your last proposition, which he did not, for it is wrong." No one gets any good by insisting; it is much better to know by instinct, as a man with tact should know, when he has been beaten. At the same time, the more neatly an advocate expresses himself the better, ^{Neatness of expression.} and the style in which work used to be done in the Equity Courts is not that which should be striven after. There is no reason why the same trouble should not be taken in formulating an address to a judge as to a judge and jury, and it is surely more courteous to try to render a speech as pleasant to listen to as possible. The *suaviter in modo* is no mean addition to the *fortiter in re*. However, the presence of neatness and style will not make up for the absence of right, no matter how much they may adorn the argument.

The way, too, in which a rebuke is taken from a Temper. judge makes much of the difference whether the blame administered by him remains in the minds of the hearers, or whether it is forgotten at once; and no one should prejudice his client's case by any exhibition of temper, as while every allowance will be made for nervousness, none will for this infirmity. The *cacoethes loquendi insanabile* (which made a Loquacity. Mr. Walker invariably known as Mr. Talker) is so deeply seated in those affected by it, that it is useless to dwell upon it here; except to remark that it leads to two defects, loquacity and verbosity, neither

Advocacy
pur et
simple.

Ed. 6.

of which can fail to create a bad effect. Moreover, enough has been said upon what appertains rather to advocacy than to practice, although the same ground is covered sometimes by both. Mr. Harris's book, *Hints on Advocacy*, which is quite an *ars oratoria*, is the one which should be consulted upon that which concerns advocacy itself rather than the subjects upon which it has to be exercised.

CHAPTER XV.

TRIAL.

ALTHOUGH owing to our past history trial by jury under certain circumstances is considered the birth-right of every Englishman at the present day, and therefore it might damage the popular confidence in the result of legal trials to abolish it entirely, there seems no reason why jury cases should be so universal as at present at Common Law. Now that they are reduced in number we have another instance in which the practice at Common Law is assimilated to the Chancery procedure. There frequently applications are made by one party or the other for a jury. *Fuller v. Sergeant*, 1882 W. N. 4, was a motion on behalf of a plaintiff that, notwithstanding a notice that the defendant desired to have the action and the issues of fact therein tried before a judge and jury, the issues of fact in the action might be tried by a judge without a jury at the same time as the trial of the action. The action was for specific performance of an agreement to grant a lease. It was held by Kay, J., that under Order 36, r. 26, it was within the discretion of a judge to decide whether such a case should be tried without a jury. In *Clarke v. Skipper*, 21 Ch. D. 134, it was, however,

has primâ
facie right.

held by Fry, J., that though the judge has a discretion as to the mode of trial, the defendant has a primâ facie right to have the issues of fact tried by a jury, and the onus is on the plaintiff to show a sufficient reason for depriving the defendant of that right. Therefore what we may have is this—a trial as to whether the cause is to be heard before a judge or before a judge and a jury, and the result will depend simply on the discretion of the judge. What may make the matter still more complicated will be if the defendant has no primâ facie right to have the issues of fact tried by a jury ; and it must therefore be uncertain how this discretion will be exercised.

True rule.

Perhaps the real rule at present is (In re *Martin, Hunt v. Chambers*, 20 Ch. D. 368, Jessel, M.R.) that either party giving notice of trial by a jury is entitled to have his case tried by a jury unless there is some reason to the contrary. Whether there is a reason or not is in the discretion of the judge, and if it is exercised in accordance with Order 36, r. 26, the Court of Appeal will not interfere with his discretion except in a very strong case. See, however, *Wharton v. Boffin*, W. N. 1883, 96, and O. 36, rr. 2—6.

Specific
perform-
ance.

In *Usil v. Whelpton*, 50 L. J. Ch. 511, Fry, J., decided that actions for specific performance are not as a rule proper to be tried before a judge and jury at the instance of the defendant under Order 36, r. 3.

Motions
for judg-
ment.

Notice of trial can, in the Chancery Division, now be given before issue joined, O. 36, r. 15, and the action must be set down when the motion is not for such order as the plaintiff is entitled to on the admissions of the defendant, when such motions are by way of short causes, which may come into vogue some day in

the Common Law Courts; but In re *Barker's Estate*, *Hetherington v. Longridge*, 10 Ch. D. 162, is an authority that motions for judgment, not being short causes, need not be set down; and that moreover (if there are admissions in a defence in an administration action), upon motion for a decree or decretal order, an order can be made upon an ordinary motion, under Order 40, r. 11.

And a plaintiff may move for judgment upon Time admissions in the pleadings at any stage of the trial, and notwithstanding that he has joined issue on the defence and given notice of trial: *Brown v. Pearson*, 21 Ch. D. 716. See, too, O. 32, r. 6. In such a case the notice of motion should contain a notice that the plaintiff will ask for leave to countermand the notice of trial, and this leave will then be given. The judgment of the Court can be obtained by motion for judgment, except where by the Act or Rules it is provided that judgment shall be obtained in any other manner. A motion for judgment may be made against an infant defendant: In re *Fitzwater*, *Fitzwater v. Waterhouse*, Solrs. J., Dec. 9, 1882, p. 88.

As to motions for judgment on admissions, see *Wallis v. Jackson*, Solrs. J., Feb. 24, 1883, p. 277; ^{On admissions.} reported also 31 W. R. 519. In *Lumsden v. Winter*, 8 Q. B. D. 650, the Court ordered final judgment to be entered for the defendant in respect of the claim and counterclaim where the plaintiff had made default in delivering a reply to the defendant's statement of claim and counterclaim. This was done under Order 40, r. 11.

Order 40, r. 3, says that when a judge or referee ^{Order 40, r. 3.} abstains from directing judgment to be entered at the trial, the plaintiff may set down the action on motion for judgment. The case of *Davenport v. Ward*, 47

L. T., explains that this is where the judge has abstained from giving judgment after being asked to do so. See now O. 40, r. 6.

Costs of
reference.

And as to the costs of a reference. Where in a reference by consent a plaintiff recovered on a contract £19 2s. 7d. without costs, it was held by the Court of Appeal that he was therefore deprived of his costs of the action by the County Courts Act, 1867, s. 5, unless he got a certificate or order for costs under that section: *Fergusson v. Davison*, (C. A.) 8 Q. B. D. 470.

When
compul-
sory.

With regard to references, it is thought that now an action may not be ordered to be referred even if questions of account arise: see O. 36, r. 7a; although no doubt, by consent, any action might be referred, and the submission to arbitration made binding. In a late case it was held that a judge had not the power to order a matter to be referred where there was a preliminary question as to liability of the defendant to be decided before any question of account could arise: *Clow v. Harper*, 3 Ex. D. 198; but the mere fact that one item in an account may involve a charge of fraud does not make it impossible for a judge to refer an action. Indeed, in a case in which the plaintiffs, a gas company, attempted to get a question of account with a customer tried with a jury, on the ground that at the trial they proposed to try to prove that the defendant had been guilty of fraud by the secret abstraction of their gas, and that upon this question, which would regulate the damages awarded, they were entitled to the verdict of a jury, it was held by the majority of the Court that they were not so entitled. See also *Martin v. Fyfe*, Q. B. D., June 14, 1883, distinguishing *Close v. Harper*.

It has always been a misfortune that a plaintiff should not get the whole of his claim tried out at the same time; whether it is practically a question of account or not, or whether, being a question of account, it involves also other questions upon which, if not mixed up with the others, he would have been entitled to a jury.

Assuming that a matter is ordered to be referred, To master. say to a master, and that when the master looks into it he finds that it involves a knowledge of a business or trade which he does not possess, he should inform his mind through some member of it, and give his certificate to the best of his ability; or else the costs of referring it should not be costs in the cause, but those of the party who chose the tribunal which would not act. In the case of a reference under a building contract, it has been decided that although a master cannot delegate his authority for *delegatus non potest delegare*, he can inform his mind as to the amount and value of the work done by sending a good surveyor to report to him. Independent evidence upon the subject can, however, if desired, be offered by the parties: *Gray v. Wilson*, 1 C. P. D. 50.

The advantage of a reference is, that the report of the master is a decision and not a mere report to the Court with regard to the matter referred to him. And when a reference to arbitration has been made under an agreement, the submission ought to be made a Rule of Court, according to the practice in the Common Law Courts before the Judicature Act. But when a reference to arbitration had been directed by a judge of the Chancery Division at the trial, and afterwards the award had been made an

Order of Court, and that order was not appealed from, it was held in *Jones v. Jones*, 14 Ch. D. 573, that the award could not be disputed, even though it was bad on the face of it. The proper course, therefore, when an action is ordered to be referred to arbitration, will be to apply to have the award made an Order of Court. And now see O. 36, rr. 54 and 55.

Referee's
report.

The report of an official referee however can be adopted at the trial, and need not be previously confirmed on summons: *Deacon v. Dolby*, Kay, J., 30 W. R. 317.

Time.

The time within which an application to set aside any award made on a compulsory reference under the Common Law Procedure Act was within the first seven days of the term next following the publication of the award to the parties, whether made in vacation or in term, and terms still exist for the purpose of setting aside an award: *Christ's College v. Martin*, 3 Q. B. D. 16. See Judicature Act, 1873, s. 59, and *Longman v. East*, 3 C. P. D. 152, which shows the modes of reference now in existence, namely that by consent, a compulsory reference under the Common Law Procedure Act, and a reference to a master or chief clerk. An agreement between parties themselves to refer a matter to arbitration makes the award of the arbitrator final, but the submission to arbitration may be revoked by either party before the decision. See now as to time O. 64, r. 16. And in the event of the order of reference being silent to costs, an arbitrator has no power to award them.

Costs.

Power in a submission to arbitration over the "cost of the reference" includes power to award costs of the award: *In re An Arbitration between Walker and Son and Brown*, 9 Q. B. D. 434. And

costs become payable within a reasonable time after taxation: *Capell v. Great Eastern Ry. Co.*, 2 Q. B. D. 463.

The proper course to give effect to the report of an official referee, where a matter of account has been referred to him before the hearing, is to move to confirm it and not to set down the action for hearing and to adopt the report as evidence. The proceedings before the referee amount to a trial: *Walker v. Bunkell*, 31 W. R. 661 (C. A.).

Way to give effect to official referee's report.

When an order has been made which as scheduled by the registrar is unsatisfactory, notice of motion to vary the minutes must be given whether it is an order of the Court of Appeal or of a Court of first instance: *General Share and Trust Co. v. Wetley* See p. 258. *Brick and Pottery Co.*, 20 Ch. D. 130.

Varying minutes.

As to when under the circumstances therein appearing the judge's ruling in an action to recover lands in the County Court should be appealed from and not a prohibition applied for against the issue of execution on a judgment, see *Barker v. Palmer*, 8 Q. B. D. 9.

Prohibition.

Where there is an ambiguity in the terms of a judgment with respect to costs and the master in consequence refuses to tax the costs of one of the parties, the proper course is to apply for a direction to the judge who tried the cause and not to appeal against the master's decision: *Abbott v. Andrews*, 8 Q. B. D. 648.

Application for direction.

It seems that the power of official referees may be much extended. They may have power to deal

Official referees.

with the whole cause, if by the order of reference it is so provided. Under the Judicature Acts the Court could not order an action to be referred to an official referee; it could only refer a question which arose in a cause for inquiry and report, and the report might or might not be adopted by the Court. Questions of fact could only be tried before him if the parties agreed, or in a cause involving a prolonged examination of documents or accounts, or any scientific or local investigation. Therefore he had no power to order judgment to be entered in any question referred to him: *Pontifex v. Severn*, 3 Q. B. D. 295. A referee is not bound to give his reasons for his findings: *Miller v. Pilling*, 9 Q. B. D. 736. The distinction between references under Judicature Act, 1875, s. 56, and under section 57 must not be forgotten. See Solrs. J., Dec. 16, 1882, p. 97, and *Ormerod v. Todmorden Mill Co.*, 8 Q. B. D. 664.

J. A. 1875
ss. 56, 57.

As to the proper mode of questioning the findings of an official referee, see *Cooke v. Newcastle Water Co.*, 10 Q. B. D. 332, and *Dyke v. Cannell*, W. N. 1883, 105.

Special
referees.

The practice of referring questions of account to a special referee instead of to a master has been springing up for some time, and it was lately decided that in any case in which there is power to refer compulsorily a question of account to an official referee, there is also jurisdiction in like manner to refer all the other issues in the action. Where cases involve questions of fraud which affect the character and fortune of the defendant, they will certainly not be sent to a special referee against the defendant's will, and the necessity for a scientific investigation of the subject-matter of the action is not in itself a sufficient reason, even in the absence of any questions of fraud,

for a reference. The drawback hitherto to this method of referring actions has been, that the special referee has not had power to deal with the whole case; and even where the judge has referred the amount of damages, he need not accept his finding either wholly or partially, but he may wholly disregard it or remit it to the referee for amendment. This was decided in *Dunkirk Colliery Co. v. Lever*, 9 Ch. D. 20, where the late Master of the Rolls, who tried the case, not being satisfied with the principle upon which the referee had proceeded, assessed the damages himself, using the shorthand notes of the evidence which had been taken before the referee. The case was remitted to the special referee by the Court of Appeal.

Parties dissatisfied with a referee's finding should move the Court which sent the action to the referee to send back the matter to him. And on a notice of motion to set aside an award the particular grounds for doing so must be specified: cf. the procedure under the Common Law Procedure Act; *Monier v. Pepperell*, 19 Ch. D. 58. Setting
aside
award.

See p. 236.

It is the duty of the junior counsel to take a full note of the evidence on the trial of an action: Lush, L.J., in *E. De la Warr v. Miles*, 19 Ch. D. 83. Duty of
counsel.

Actions are tried according to the practice of the Court to which they are remitted; and in County Courts judges are at liberty to adopt what practice they please which does not involve the denial of a right existing either by common law or by statute, For instance a County Court judge may refuse to allow a defendant to sum up his evidence: *Dymock v. Watkins*, 31 W. R. 331. And see O. 36, r. 36. Method
of trial.

Before an action can be marked short, a certificate Short
causes.

of counsel is necessary that the case, in his opinion, will not take more than a few minutes.

Special case.

Another way in which the rights of parties can be settled is by special case, as to which see O. 36, rr. 1 and 2, and now a judge has power, after writ and appearance and before statement of claim, to order a point of law to be decided by statement of special case: *Metropolitan Board of Works v. New River Company*, 12 Q. B. D. 67; although when the interests of parties to a special case are not of such a nature as to give the Court jurisdiction to decide the questions, it will not decide upon a fictitious issue created for the purpose of obtaining a decision. Special cases are now by consent often heard before a Divisional Court. As to the effect of a decision upon a special case under a mistake of fact, see *In re Toller's Estate, Tomlin v. Underhay*, 22 Ch. D. 495, C.

Case stated under Act.

A case stated for the Queen's Bench Division under the Act, 12 & 13 Vict. c. 49, s. 11, should contain a statement of the agreement of the parties that judgment in conformity with the decision of the Court may be entered at Quarter Sessions in the manner provided by the section: *The Corporation of Peterborough v. The Overseers of Thurlby*, 8 Q. B. D. 586. See p. 234.

Marking documents.

Every document which it is intended to use as evidence ought to be formally put in and marked by the registrar. No documents are evidence until they are put in at the trial. The mere fact that they are admitted in the admissions does not make them evidence: James, L.J., *Watson v. Roduck*, 12 Ch. D. 153.

Adjourning into chambers.

As to the power to adjourn further hearings into chambers, see *In re Moate's Trust*, 31 W. R. 497.

CHAPTER XVI.

NEW TRIALS AND MOTIONS.

See **Order 39.**

NEW trials are only granted in the case of actions New trials. heard before a judge and jury, as when actions are tried before a judge alone the proper course is to appeal from the judgment if a new trial is desired. The notice of motion for a new trial is to be given before the Divisional Court, stating the grounds of the application by affidavit, and the application to be disposed of on the motion itself. Some of these Grounds of application for. grounds are—that the judge has misdirected the jury, that the verdict is against the weight of evidence, that the judge has rejected evidence which ought to have been admitted, or admitted evidence which ought to have been rejected, that the damages given are much too great or much too small, or because a point of law has been reserved for the losers.

But now neither party has a right to a new trial on New practice. the ground of misdirection or that some question has not been left to the jury which the judge at the trial has not been asked to leave to the jury. In such a case the Court may direct a new trial, or draw all inferences of fact or take further evidence, or direct

inquiry to save a further trial ; and it is conjectured, after drawing such inferences and getting the further evidence required, may give the proper judgment and finally decide the whole matter. But see r. 6.

When
judge dis-
satisfied
with ver-
dict.

In flagrant cases, the best course is to apply to the judge at the trial to certify that he is dissatisfied with the verdict ; for, if he does so, a new trial will take place, almost as a matter of course. Whenever it is intended to move for a new trial, unless the verdict is satisfactory, great care must be taken by the party moving to get as favourable a view of his case as possible upon the judge's notes. The Court does not usually decide upon any application for a new trial without having seen these notes, and it is natural that they will be much guided in their decision by what they find in them. The judge has had the opportunity of noticing the demeanour of the witnesses, and also the conduct of the parties ; and this personal knowledge of the evidence makes his opinion so valuable that the Court will be loth to interfere with it.

When
verdict
against
evidence,
discretion.

However, it was decided by the Court of Appeal in *Solomon v. Bitton*, 8 Q. B. D. 176, that where the ground of the application for a new trial is that the verdict was against the weight of evidence, the result must depend upon whether the verdict was such as reasonable men ought to have given, and not whether the learned judge who tried the action was dissatisfied or not with the verdict. In other words, the discretion of the judge before whom the first trial took place is not omnipotent where it is attempted to upset the verdict as having been given against the weight of evidence.

It seems probable that by leave new evidence may be used on the application for a new trial, and that in proper cases the witnesses at the first trial may come before the Court, or even new witnesses be called as on appeal: *Dicks v. Brooks*, 13 Ch. D. 652; *Hastie v. Hastie*, 1 Ch. D. 562. See also *Bigsby v. Dickenson*, 4 Ch. D. 24. It is for this reason among others that it is of such importance to get the judge to certify that he is dissatisfied with the verdict. New evidence.

Of late there has been a growing feeling that new trials have been too frequently granted, and that the statements made by counsel upon the applications for them have been less accurate than they might have been. The best way is to get the statement which it is intended to make incorporated into affidavits, as counsel can then at once produce his authority if challenged. When the application is made upon the ground of having been taken by surprise at the trial, or where very strong and very material evidence has since the trial come to the knowledge of the applicant which he could not have got before, its fate will hang upon the affidavits used, for such matters will not appear upon the judge's notes. Surprise. Before the Common Law Procedure Act, 1854, leave was never given for a new trial on the ground of surprise or further information, except upon payment of the costs of the former trial; but by that Act the costs of the first trial were ordered to abide the event of the second trial unless otherwise ordered, and the Judicature Act has expressly re-enacted this provision. Further information. A case in which this principle was acted upon was *Field v. Great Northern Railway Co.*, 3 Ex. D. 261. There the plaintiff was held to be entitled to the costs of the first trial, as part of the C. L. P. Act, 1854.

costs of the action, which under O. 65 follow the event, unless otherwise ordered.

Difficul-
ties.

Before leaving the subject of new trials, it may be well to point out that great judgment should be exercised in deciding whether or not to apply for a new trial, except in extreme cases or where some intimation has fallen from the judge at the trial. There must be an objection to upset the verdict of a jury unless perverse, to begin with; also to interfering with what the judge at the trial who saw the witnesses let pass; and generally to disturb what should be immovable, and to keep undecided for some time what should be settled as quickly as possible, to say nothing of the additional expense. Therefore the first loss is often the best to put up with.

Time.

As to the time within which a new trial can be applied for, it is sufficient to say that notice of motion used formerly to be given for a day before the fourth day of the term next after the trial; but that now (O. 39, r. 4), if the trial took place in London or Westminster, it must be made within eight days after the trial, or on the first subsequent day on which the Court to which the motion must be made shall have actually sat to hear such applications. And if the trial took place elsewhere than in London or Middlesex, within seven days after the last day of sitting on the circuit during which the action was tried, or within the same number of days of the sitting next following, if such day occurs during a vacation. The time dates from the discharge of the jury, notwithstanding that the judge has reserved the case for further consideration: *Shaw*

Dates
from dis-
charge of
jury.

v. *Hope*, 25 W. R. 729; and the judge at the trial should be asked to stay execution pending the appeal, which he will generally do unless he thinks the appeal not a genuine one, or as having been made for purposes of delay. See O. 42, r. 37. Stay of execution.

Leave of the judge, however, must not be sought inconsiderately, or it may be found to be of no avail. *Mears v. Chittick.*
In *Mears v. Chittick*, 9 Q. B. D. 35, leave was given to the unsuccessful party by the judge in the Mayor's Court to move the Divisional Court after a rule had been obtained to enter a nonsuit or for a new trial. It was held that the original leave had exhausted the power of the Court. This case applies strictly only to Mayor's Court practice, and merely illustrates the necessity for caution in such applications.

There have been cases in which it has been a question whether a motion for a new trial or an appeal was the right course to pursue. New trial or appeal. Such a case was *Davies v. Felix*, 4 Ex. D. 32, where it was held that an appeal would not lie where the judgment upon the face of it was correct so long as the finding stood, although a mistake in direction was alleged; for the Court of Appeal has no power in the first instance to review the finding of a jury. In *Potter v. Cotton*, 5 Ex. D. 137, it was held that in the case of a trial before a judge alone, if it is alleged that he has misdirected himself as to the law, or that his findings as to the facts are against the weight of evidence, the proper mode of obtaining relief is by appeal, and not by motion for a new trial. As to the power of the Court of Appeal to amend the record of trial, see *Clark v. Wood*, 9 Q. B. D. 276.

Fraud.

But judgment will be set aside in other cases also. For example, in *Williams v. Preston*, 20 Ch. D. 672, the Court of Appeal held that it had jurisdiction to set aside the judgment, or to permit a defence to be withdrawn and a new one put in, where the solicitor of the defendant had put in a fraudulent defence for his client without his knowledge, in which were contained admissions upon which the judgment was obtained against the client.

**Appeal
from in-
ferior
Courts.**

**Case
stated.**

But not only new trials, but also other proceedings, which will be dealt with in detail, must be applied for, (1) by notice of motion, (2) stating the grounds of the application (i.e., by affidavit) to the Court, and (3) the application will be disposed of on the motion if the rule nisi is abolished. Whether this application is to be made to the Court of Appeal, or to a single judge, will be seen from O. 52, rr. 1—4. One of the most important classes of these proceedings is: The motion by way of appeal from inferior Courts. The mode in which this appeal in the case of appeals from justices used to be made, was regulated by 20 & 21 Vict. c. 43, which enabled parties to get the opinion of the superior Courts on questions of law arising out of any matter in which justices have summary jurisdiction without certiorari, and its provisions were practically re-enacted by the Summary Jurisdiction Act, 1879. Any party to a proceeding before justices dissatisfied with the determination come to by them, can make an application in writing to the said justices within a fixed time to state and sign a case setting forth the facts and the grounds of such determination for the opinion of one of the superior Courts, and such application must be granted unless frivolous, in which case a certificate

to that effect is given instead. Then within a fixed time the case is transmitted by the applicant to the Court, and notice in writing given to the other side as well as a copy of the case. Any complaint which justices are bound to hear and determine can thus be made the subject of an appeal; but where they are not so bound—as for instance where they have refused to enforce the payment of a rate on the ground that the land assessed was exempt—in fact wherever there is an appeal to Quarter Sessions, a case should not be stated. When the application for a case is made, the appellant must enter into a recognisance with or without a surety, in such a sum as the justices think sufficient, to prosecute the appeal without delay, and to submit to the judgment of the superior Court, and to pay any costs it may award; and if in custody he may be let out, upon being further bound to appear, within ten days after the judgment of the superior Court, before the justice's Court, unless the determination appealed from is upset. At the hearing there must be an affidavit of the due service of (1) the notice of appeal and (2) of a copy of the case upon the other side. Although the Court has complete jurisdiction over the costs, it does not generally allow any to the appellant if the respondent does not appear. This will still be one way to appeal from the decision of a County Court judge, but when it is intended to do so it is always well to ask him to take notes, that the Court of Appeal may be able to see what took place before him. This is not however a condition precedent to the right to appeal: *Seymour v. Coulson*, 5 Q. B. D. 367.

Affidavit.

Appeal
from
County
Court.

When it is desired to set aside an award, the same Setting

- aside an award. method will be pursued, except where the submission, not being in an action was not in writing, or not being in an action but in writing, did not contain a clause forbidding its being made a Rule of Court. In these two cases an action must be brought to enforce the award. As to the time within which the notice of motion to set aside an award must be given, if the award was made on a compulsory reference, it was sufficient if given in time for a day within the first seven days of the term next following the publication of the award; but in other cases it may be upon any day, except the last in the same term: Common Law Procedure Act, 1854, s. 9. Now, however, any day during the term following suffices: **O. 64, r. 14.** And terms still exist as a measure for determining time: In re *College of Christ*, 3 Q. B. D. 16; and this time cannot be extended even by consent: *N. B. Ry. Co. and Trowsdale*, L. R. 1 C. P. 401. The order or submission must be made a Rule of Court, and the award made an exhibit to an affidavit verifying it; and the reasons for setting it aside, if not apparent upon the face of the award, must also be set out in an affidavit. No second application even upon fresh grounds is allowed, and costs are entirely in the discretion of the Court, and the appellant will generally have to pay them when unsuccessful, although he may have had good grounds for his application. Though the Court will not set aside an award, it will sometimes send the matter back to the arbitrator, if expressly asked to do so: *Feuron v. Flinn*, L. R. 5 C. P. 34.
- See p. 228.
- Time.
- Terms still exist.
- Enlargement impossible.
- Costs.
- When arbitrator states case.
- If it is suspected that the award will not be a satisfactory one, the arbitrator should be asked to state his reasons for giving it, in which case it will be much easier to upset it; or if any question of the

principle upon which he gives it arises, he may state a case for the opinion of the Court, the costs of which will be general costs in the matter: *Rhodes v. Airedale Drainage Commissioners*, 1 C. P. D. 402; and see *Bexley Local Board v. West Kent Sewage Board*, 9 Q. B. D. 521.

Indeed before instituting an action care should be taken to ascertain that there has been no binding agreement between the parties made to refer the matter in dispute, as if so upon the application of the defendant, it may be compulsorily referred, and the plaintiff will have to pay the costs of the proceedings up to and including such application (if made promptly), and a good deal of delay will be caused; and such proceedings will be of no ultimate use, as the award must be set aside, or varied, or upheld, and not an action about the matter in dispute determined. See *Hodgson v. Railway Passengers Assurance Co.*, 9 Q. B. D. 188.

Many statutes too, and notably the Lands Clauses and Railway Clauses Consolidation Acts, contain provisions compelling the value of property taken under compulsory powers by public bodies to be ascertained by arbitration, and forbidding any action in respect of the price of such property until its value has been so ascertained. Awards made under them will be upheld, varied, or set aside in the way now treated of. As to the costs of reference under these Acts, it may here be remarked that although when notice to treat under the Lands Clauses Act and also notice of having appointed an arbitrator has been given, unless before the time fixed for the appointment of the respondents' arbitrator they have made a definite offer of some fixed sum for the pro-

Compul-
sory refer-
ences.

Under
Acts.

Costs
under
Lands
Clauses
Act.

perty taken, they must pay all the costs of the reference; while, if notice is given under the Railway Clauses Act, the costs will be in the discretion of the arbitrators or their umpire if they disagree.

The costs of applying to set aside the award made will not be included in the costs of the reference, although those of a case stated by the arbitrators would. But a consideration of these matters appertains more properly to a book upon compensation than to a treatise on practice.

Applications too for attachments mandamus, quo warranto and scire facias, are also made in the same way; and a few words may perhaps not be out of place here upon each one of these proceedings.

Attach-
ment.

Though any superior Court can attach a person who does not fulfil an order made by it, this proceeding is generally only resorted to in cases where solicitors, being officers of the Court, or parties against whom an order has been issued, have openly refused to do what they have been ordered to do. Attachments, therefore, will only issue in the Queen's Bench Division for some refusal to obey a rule of that Court (for instance, for not obeying a mandamus), and not for inattention to an order of the Bankruptcy Court or Chancery Courts, who will enforce their own orders. But see O. 42, rr. 4, 6, 7.

Order must
have been
properly
intituled.

The order for the breach of which an attachment is moved for must have been fully and properly headed or it will not issue: In re *Holt*, 11 Ch. D. 1.

Sheriffs.

An application to attach a sheriff for not making a return to a writ of fi. fa., under Order 44, r. 2, should be ex parte in the first instance: *Fowler v. Ashford*, 45 L. T. 46.

As this proceeding has something of a coercive nature about it, every latitude will be given to the defendant, and the burden of proof of all the necessary incidents, including personal service of the notice of motion upon him, will lie upon the plaintiff. And it can only be made on notice: *Eynde v. Gould*, 9 Q. B. D. 335. For instance, in the case of enforcing an award in which it was formerly used, a formal demand for payment of the exact sum had to be made, and copies of the Rule of Court and allocatur personally served. Personal service.
See p. 150.

An affidavit of the service of the copy of the rule and allocatur and of a copy of the award, and also of its due execution, had to be made to get the rule nisi, which will now be done away with; and afterwards personal service of the notice of further proceedings was indispensable, and an affidavit of service of it had also to be made; but now service on the solicitor of the defendant is sufficient: *Browning v. Sabin*, 5 Ch. D. 511. Service on solicitor. And the notice of motion may be served by leaving it at the place of residence of the party affected thereby: *In re A Solicitor*, 14 Ch. D. 152.

Leave to issue a writ of attachment for non-production of documents was granted by Fry, J., in *Joy v. Hadley*, 47 L. T. 615; 22 Ch. D. 571, upon proof that the order or production had been served on his solicitor. For non-production of documents. See *Hints to Solicitors*, p. 17. The order must, however, be entered even though made at chambers before obedience to it can be enforced by attachment: Pearson, J., in *Ballard v. Tomlinson*, Solrs. J., May 12, 1883, p. 466. If the order is being appealed the order for attachment may be made not to be drawn up if the appeal succeeds, nor if not until

two days from the hearing, the affidavit not being then filed: *Mellor v. Thompson*, W. N. 1883, 128.

Debtors
Act, s. 4.

Except in the case of solicitors and disobedience to an order for discovery, an attachment will not generally now be granted except to enforce payment of money within the exceptions to section 4 of the Debtors Act, 1869. To the writ of attachment there should be a note appended that it does not authorise imprisonment for more than one year. When this is done no order of discharge is necessary: In re *Edwards, Brooke and Edwards*, 21 Ch. D. 230. The most usual case in which it is used is that of a person acting in a fiduciary capacity (sub-section 3); and *Morris v. Ingram*, 13 Ch. D. 338, well illustrates what class of person this is.

That the Debtors Act, 1878, has made some difference in the practice of the Courts is to be seen from the remarks of Bacon, V.-C., in *Barrett v. Hammond*, 10 Ch. D. 289. Now a man will not be sent to prison vindictively—only if he can pay and won't pay.

Costs.

As to the time for the delivery of briefs for a motion for attachment for not filing an affidavit of documents, see *Thomas v. Palin*, 21 Ch. D. 360, from which it would appear that if after the notice of motion for attachment is served the affidavit is filed, the defendants should offer to pay a sum in lieu of costs, and if that is refused take an order to tax.

Inability
to pay.

And although inability to pay is no reason for discharge, a man will not be kept in prison vindictively for non-payment of costs.

Injunction
by tele-
gram.

Several motions to commit have been made for not attending to an injunction, notice of which had been sent by telegram. The proper course is to telegraph to a solicitor in the place at which the defendant

lives, and for him to give notice of the injunction to him as the agent of the sender of the telegram, otherwise proof beyond reasonable doubt of having disregarded it must be furnished: *Ex parte Langley*, 13 Ch. D. 110; *In re Bryant*, 4 Ch. D. 98. The question of costs should be disposed of at the ^{Costs.} time of the application for the writ: *Abud v. Riches*, 2 Ch. D. 528.

An appeal from a refusal to commit for contempt ^{Appeal.} lies to the Appeal Court. Although where such ^{Discretion.} refusal has been simply an exercise of judicial discretion, the Court of Appeal while entertaining an appeal will be slow to interfere with the decision of the Court below: *Jarman v. Chatterton*, 20 Ch. D. 493.

Every superior Court was by the Common Law ^{Manda-} Procedure Act empowered to issue the writ of ^{mus.} mandamus in an action, if claimed by a plaintiff ^{Statutory.} alone or joined with any other claim except in replevin or ejectment. O. 53, rr. 1—4 is now the authority.

The prerogative writ, which must not be mistaken ^{Preroga-} for this (as to which see O. 53, rr. 5—15), is issued ^{tive writ.} only where a legal right exists for which there is no specific legal remedy and compels the fulfilment of duties enjoined by Acts of Parliament charters and things of a like character, where by non-fulfilment personal mischief results. As this book has to do with practice rather than principle, it may be sufficient to say that a mandamus lies to compel the admission of or to restore a person to an office, and to compel corporations to hold elections, and inferior Courts to give judgment in due course of law, as also to justices to appoint officers.

Enforces
public
duties.

The duty that it is desired to compel the performance of must be of a public nature, and the writ commands the person or corporation to whom it is directed to do some particular thing mentioned in it, or to show good cause to the contrary. It may however be absolute in the first instance. No time exists within which it may be brought; except that in the case of a mandamus to a Court of Quarter Sessions to hear an appeal it should be made during the term next after the refusal of the Court to do so.

Instance.

The Queen v. The Justices of Middlesex, In re *Elsdon*, 9 Q. B. D. 41, was a motion for a rule nisi calling upon the justices of Middlesex at Quarter Sessions to show cause why a mandamus should not issue commanding them to hear and determine an appeal against the order of a metropolitan police magistrate to demolish a building erected by the owner beyond the general line of buildings in a street, contrary to the provisions of the Metropolis Local Management Amendment Act, 1862. The rule was refused.

To County
Court
judge.

As to where a mandamus is the proper course to compel a County Court judge to determine a matter, see In re *Brighton Sewers Act*, 9 Q. B. D. 723.

Demand.

In order to get a mandamus now, it must be shown that a demand has been made upon the defendant to do what he is required to do, and that he has refused, but no actual damage need have been sustained: *Fotherby v. Metropolitan Ry. Co.*, L. R. 2 C. P. 188.

Ground of
claim.

That there exist sufficient grounds for the plaintiff to found his claim upon, and that in the matters themselves out of which the defendant's duty has arisen, the plaintiff is personally interested, and will sustain damage if the act claimed to be done is not done

Affidavits of service are indispensable. If the application is discharged costs may be given, although they seldom are until it is seen whether the mandamus is obeyed or not. If the mandamus is not obeyed—and here it must be noticed that the original writ and not a copy is served upon the defendant—but a return to it, excusing the defendant's disobedience, is made, the return will have to be carefully considered, and if thought insufficient it used to be demurred to, or if false traversed and pleaded to. Then if the return is quashed, a peremptory mandamus issues, which can be enforced by attachment; or the Court may order that the act required to be done may be done by the plaintiff or some person else at the defendant's cost. Damages can be given, and costs ordered as the Court may think fit.

When there has been an unreasonable delay the Court can refuse to allow a mandamus to issue: *The Queen v. Mayor of Maidenhead*, 9 Q. B. D. 505.

The mandamus referred to in the Judicature Act, 1873, s. 25, sub-s. 8, is not the prerogative writ. It is explained in *Glossop v. Weston Local Board*, 12 Ch. D. 122. On the prerogative writ see *Julius v. Bishop of Oxford*, 5 App. Cas. 214.

As to mandamus for reassembling and a meeting for the election of officers, see *Reg. v. Vicar of St. Asaph*, W. N. 1880, 100.

The chief use at present made of quo warranto is to try the right of a person holding a corporate office, or the office of steward of a Court-leet, constable, &c., to hold it and to turn him out when necessary. It was formerly used where any royal liberty

Quo warranto.
See O. 68,
r. 2.

What the
affidavits
state.

had been usurped, and by its means the usurper was made to show his title; but now a motion is made by any private individual for leave to file an information, though this could be done by the attorney-general ex officio. He is called the relator, and the application is made upon affidavits showing (1) the exercise of the office by the person against whom the information is prepared; (2) facts making it appear that he has no title thereto, and that if irregularity in his election is alleged, the result of the election was affected by it: *Reg. v. Cousins*, L. R. 3 Q. B. 216, n.; (3) that the relator has a real interest in the matter, and that he has not concurred in the act of the defendant.

What de-
fendant
does.
Costs.
Time.

If the application is allowed the information is drawn by counsel, and the relator enters into a recognisance and the defendant is subpoenaed to appear. He then pleads files a disclaimer or allows judgment to go by default, and judgment is ultimately given as in an ordinary action. The Court will exercise a discretion as to costs. As to the time within which a quo warranto is applied for, it is twelve calendar months after the election to the office, or the time when the person has become disqualified: *Ex parte Birkbeck*, L. R. 9 Q. B. 256. As to when it will be made absolute after recognition of an office: *Reg. v. Blizzard*, L. R. 2 Q. B. 55.

Scire
facias

The writ of scire facias recites the judgment upon which it is founded, and that he who has obtained it had not judgment upon it; that the judgment is still unsatisfied, and that he ought to have execution upon it. It calls upon the defendant to show cause why execution should not issue; and he has eight

days to appear in to do so. It is used now against ^{When} bail where, after judgment has issued against their ^{used.} principal, they have not rendered him in proper time; and also against holders of shares not fully paid up by judgment creditors of companies; as, for instance, where a company had assets in Ireland, but not in England; and where a company had property, but not sufficient to satisfy the judgment debt. Notice ^{Notice,} to the person sought to be charged must be served ^{how ser-} personally or on his solicitor; and an offer to pay ^{ved.} under protest the sum claimed is a good tender, and a scire facias will not be issued after it: *Scott v. Uxbridge and Rickmansworth Ry. Co.*, L. R. 1 C. P. 596. The issue of the writ is in the discretion ^{Discretion.} of the Court, but such discretion must be exercised according to the known rules of law: *Ex parte Stevens*, L. R. 6 C. P. 576. Even if the judgment roll is erroneous the Court will not refuse to issue this writ: *Williams v. Sidmouth, &c.* In re *Webber*, L. R. 2 Ex. 284. The writ is also used to try the validity of a patent: *Rollins v. Hinks*, L. R. 11 Eq. 355.

One way of punishing a solicitor for misconduct ^{Striking} in his profession is by striking him off the Roll. ^{off Roll.} This is done by motion, and it must be stated in the affidavits in support, (1) that the person against whom the application is made is a solicitor of the Court, and (2) the grounds of the application; (3) that fourteen days' notice has been given to the registrar of solicitors.

If the misconduct charged amounts to an indictable ^{For indict-} offence, the motion will not be granted until he has ^{able} been prosecuted therefor; but if he has been con- ^{offence.} victed, he will be struck off the Roll and no notice to

him is necessary. He may however be punished also by fine or attachment, and it rests entirely with the Court to determine whether or not he shall be struck off the Roll. The application is often made at the instance of the Incorporated Law Society.

The misconduct must have been committed in his professional character, and before the solicitor can be restored to the Roll he must have made as full restitution as lay in his power. When a solicitor has been suspended from practising in the Chancery Courts, it is usual for the Common Law Courts to suspend him likewise.

If the applicant obtains a rule and does not have it drawn up within a week, the registrar of solicitors can get the same drawn up as if he had been himself the applicant, under the Solicitors Act, 1874, s. 2.

There is now no rule nisi necessary: **O. 57, rr. 2—4.**

Answer-
ing matter
in affidavit.

The answering of matters in an affidavit by a solicitor can be also obtained by notice of motion in the same way, and upon this nothing need be said. It is obvious that some method less rigorous than that last mentioned must exist for dealing with a defaulting officer of the Court, and this is perhaps as good a method as any that could be devised. See *Hints to Solicitors*, p. 15.

Criminal
informa-
tion.

In order to file a criminal information it is necessary to move the Court. Leave can only be granted in the case of a misdemeanour, and not of a felony; and as a simpler method of effecting the same end would be by indictment, it will not be given where the complaint is a slight one, or where the prosecutor has been in fault. It is frequently used in libel, but it is essential that the libel should be altogether

When not
granted.

false. The whole of the facts upon which the claim is based must be set out in the affidavits.

Notice to the defendant was not formerly necessary, except when he was a magistrate in respect of something done in the execution of his office, when six days' notice was necessary, as well as an affidavit of service. The motion cannot be made on the last day of term, and must be made with all due diligence.

The defendant will get his costs if judgment is given for him, and he may recover them by an action. Costs.

In all these matters the rule nisi is abolished, and they are specially alluded to here as having been mentioned by name in Resolution 15 of the Report of the Committee of Legal Procedure, upon which the new rules are based.

Motions in all the Chancery Courts, except that of Mr. Justice North, are made once a week, and on the first and last days of term. Motions.

When notice of motion is given for a particular day the motion need not be brought on till the following motion, day. If it is not, the costs of an abandoned motion may be applied for by any person on whom the notice of motion has been served ; but the counsel on the other side should be informed that this will be done : *Aitken v. Dunbar*, 25 W.R. 366. As to the practice in abandoned appeals, see *Webb v. Mairal*, 2 Q. B. D. 117. And now as to motions, see O. 52. Abandoned motions.

CHAPTER XVII.

SOME OTHER APPLICATIONS.

Inter-
pleader.

O. 57 is the order in the new Rules which deals with Interpleader, but an alteration in the rules relating to this subject may be expected.

Against
sheriff.

The theory of the Interpleader Acts, 1 & 2 Wm. IV. c. 58, and 23 & 24 Vict. c. 126, ss. 12—18, the procedure and practice under which have been preserved by the Judicature Acts, is to protect a person harassed by conflicting claims, and in particular a sheriff. In the case of a sheriff (who has not to wait till a writ is issued against him as any other person is compelled to do), a summons is taken out at chambers, calling upon those claiming the goods seized to appear and state the particulars of their claims; and then, if it appears that the goods are of little value, upon the application of either party, the case as well as the question of costs may be disposed of summarily. Also, when the question is one of law, and the facts are not in dispute, the judge has discretion to decide the question without directing an action or issue, or to order a special case to be stated. Or if he thinks well, he can direct an issue to be tried, and who should be plaintiff and defendant in such issue.

al.

Notwithstanding that the judge at chambers refers the matter to the Court, his judgment is final, and without appeal. The rule upon this is most clearly

stated by Brett, L.J., in *Turner v. Bridgett*, on appeal, 9 Q. B. D. 57: "Upon anything which may occur on the trial of an interpleader issue there is an appeal from the judgment of the judge who tries such issue either with or without a jury; but where a judge at chambers who hears an interpleader summons does not order an issue but decides the matter in the exercise of the summary jurisdiction given by section 14 Common Law Procedure Act, 1860, his decision is final, and there is no appeal from it." And the ^{Costs.} question of costs cannot be appealed: *Hartmont v. Foster*, 8 Q. B. D. 82. Nor can there be an appeal, even by consent: *Dodds v. Shepherd*, 1 Ex. D. 75. See O. 57, r. 11, as to appeal, and r. 15 as to costs.

But the sheriff can apply to the Court of Bank- ^{Bank-}ruptcy for an interpleader order, and the order made ^{ruptcy} by it can be appealed from: *Ex parte Streeter*, *In re Morris*, 19 Ch. D. 216. Whichever side is wrong generally has to pay the sheriffs' costs, which are now in the discretion of the Court (same case), and no action is allowed to be brought against the sheriff in respect of the seizure of the goods. ^{Court.}

It was remarked by Bowen, L.J., in *Courcier v. Barditi*, Sol. J., 24 Feb., 1883, p. 276, that in interpleader suits Courts of law would view the question from an equitable as well as a legal standpoint, and therefore in that case a trust was allowed to be set up by the execution debtor. ^{Trust set up by debtor.}

In the case of interpleader by other persons than sheriffs, the application is by summons to a judge in chambers, calling upon the claimant to appear and state his claim. It is made on affidavits, which must show that the party taking out the summons is ^{Not by sheriff.}

not personally interested in the subject-matter; that it is claimed by a third person, who is expected to sue; and that the party applying is not colluding with the third party, but is ready to bring the subject-matter into court.

When
claimant
barred.

If the claimant does not appear his claim is barred; if he does the judge can act as in the case of an interpleader by a sheriff, or may order him to be defendant in the action pending against the applicant. Notice can be given to cross-examine any witness upon his affidavit, upon the application of either party, but in the bustle of judges' chambers such a course cannot be pursued with advantage. In all cases now, under **Order 54, r. 2**, a master has jurisdiction in interpleader; and as he can order a sale his jurisdiction is important; but it is not thought that the practice in it is otherwise materially affected by the new Rules. **O. 57** ought, however, to be consulted as points arise in practice.

Costs.

As to the costs of an interpleader the custom of the masters generally was not to give a sheriff costs. See however *In re Streeter, Ex parte Morris*, 19 Ch. D. 216, where Jessel, M.R., distinctly states that these costs are in the discretion of the Court; and *Ex parte Webster, In re Morris*, 22 Ch. D. 136, where they were given at the trial of an interpleader in bankruptcy. It is difficult, therefore, to see the principle upon which costs were refused.

Williams v.
Mercier.

The Court of Appeal had power under **Order 40, r. 10**, to order judgment in an interpleader issue to be entered for the execution creditor without directing a new trial in certain cases: *Williams v. Mercier*, 9 Q. B. D. 337.

By section 25, sub-section 8, of the Judicature Act, Judicature Act, 1873, s. 25, sub-s. 8. 1873, an injunction, receiver, or mandamus can be granted by an interlocutory order of the Court in all cases, and upon such terms as the Court thinks right.

Under this sub-section a receiver can be appointed Interim receiver by defendant ex parte by the defendant in a partnership action, although the plaintiff had asked for the appointment of one in his writ but had not applied for the appointment of a receiver by motion: *Hick v. Lockwood*, W. N. 48, 1883.

Neither an injunction nor a receiver can be obtained except after the issue of a writ in an action, Writ must be issued. and if they form a substantial part of the plaintiff's claim for relief they should be asked for in the writ. The jurisdiction vested in the High Court is practically unlimited, and can be exercised by any judge in any case in which it is right and just to do so, having regard to settled legal reasons and principles. For instance an injunction can be granted to restrain Examples of injunctions. a defendant from ceasing to pump water out of a mine, or by a director against his co-directors, to restrain them from wrongfully excluding him from acting as a director. Where an interim injunction Interim injunction over next motion day. is granted over the next motion day, or until further order, it signifies that the injunction may be dissolved before the day fixed, but cannot be extended beyond that period except with the leave of the Court: *Bolton v. London School Board*, 7 Ch. D. 766. But a proceeding pending in one Court cannot One Court cannot restrain another. be restrained by the injunction of another Court: *Wright v. Redgrave*, 11 Ch. D. 24; and the Judicature Act has not altered the principles on which the Court acts in granting injunctions: *Gaskin v. Bates*, 13 Ch. D. 324. See p. 57.

An injunction may be granted at the hearing of an action that would not be granted upon an interlocutory application, and a good way for a defendant to avoid an interlocutory injunction is to give an undertaking to abide by any order the Court may make at the hearing. As to when an injunction is brought in the face of an undertaking, see *Caruncho v. Highmoor*, L. J. Notes, p. 15, Feb. 10, 1883; and as to injunction, see O. 50, rr. 6, 11, 12.

Under-
taking.

An undertaking to abide by any order which the Court may make as to damages or otherwise, is often ordered to be given by the party getting an interlocutory injunction, and it behoves him when applying to consider well whether it is worth his while to take it on these terms. There is not the same danger in the case of the appointment of a receiver upon an interlocutory application; although upon such appointment (especially if made without security, which it never is unless the person appointed is deeply interested in the proper management of the property) an undertaking is often required to deal with it only under the direction of the Court, and to abide by any order subsequently made as to damages. In order to enforce an undertaking as to damages, there must be no delay: *Ex parte Hall*, W. N. 1883, 96. See p. 9.

Enforce-
ment of.

Receiver
security.

Unless a receiver is appointed without security, he is not constituted receiver till he has given security: *Edwards v. Edwards*, 2 Ch. D. 291.

Guarantee
Society.

Carpenter v. Solicitor to the Treasury, 31 W. R. 108, is an authority that the Guarantee Society is a sufficient surety to the bond given by an administrator, notwithstanding that the bond is limited to

its capital; and therefore it is inferred that the security of that society would be sufficient in the case of a receiver.

The appointment of a member of the firm of the plaintiff's solicitors as receiver is improper, as the receiver's accounts cannot in such a case be properly checked: *Allen v. Lloyd*, 12 Ch. D. 447. Indeed even a party in an action should not, except in an extreme case, be appointed a receiver without the consent of the other party.

Plaintiff's
solicitor's
partner
cannot be
receiver.

The judge in whose court the writ is issued should be applied to to grant the receiver, but in a case in which his judgment was appealed, and a receiver needed after such appeal, the application was made to the Court of Appeal without any previous application to the Divisional Court or a judge: *Hyde v. Warden*, 1 Ex. D. 309.

And if a receiver is required of an equity of redemption possessed by a defendant, against whom the plaintiff has got a judgment and issued execution but has been unable to get it satisfied, it should be moved for in the old action in which the judgment was obtained: *Smith v. Cowell*, 6 Q. B. D. 75. When a bankruptcy and consequent loss to a trust estate is expected, a receiver may be appointed before the service of a writ in an action: *In re H.'s Estate*, H. & H. 1 Ch. D. 276. The appointment is discretionary, and the Court of Appeal will not as a rule interfere. If a receiver disobeys an order of the Court, there is no necessity to obtain leave to serve a writ of sequestration against him.

When
Appeal
Court ap-
points.

*Smith v.
Cowell.*

The greatest necessity that there can be for the appointment is when there is apparent immediate

Sequestra-
tion.

danger of the destruction of the corpus of the property. When a person is ordered to pay dividends into court, a receiver of such dividends may be appointed, and he may be restrained from disposing or dealing therewith, although under Order 42, r. 2, it seems that the payment of money into court may be enforced by attachment or sequestration: *Stanger Leathes v. Stanger Leathes*, 1882 W. N. 71.

Partner-
ship ac-
tions.

Receivers are frequently appointed in partnership actions. In *Medwin v. Ditcham*, 47 L. T. 250, a receiver not being also a manager was appointed, although all that the plaintiff claimed was an account, and not a dissolution of the partnership (V.-C. B.).

During
reference.

The late case of *Halsey v. Windham*, 1882 W. N. 103, shows that an application for a receiver and injunction will be entertained even where the plaintiff and defendant have agreed to refer matters in dispute to arbitration by the terms of their partnership deed.

Injunc-
tion.

The case of *Hill v. Hart Davies*, 21 Ch. D. 802, also shows that an injunction can be granted to restrain a libel likely to injure a friendly society or a joint stock company.

Affidavits
of fitness.

Affidavits of fitness, which should not be made by the solicitor applying, In re *Lowe*, S. J. 416, Ap. 21, 1883, of the person proposed as receiver are required, unless he is a party to the action, and an application may be made to remove him for misconduct. With regard to injunctions, it need only be said further, that too great care cannot be taken in the form in which they are drawn up and the parties against whom they are

Form of
injunc-
tion.

directed, as an attachment will not be granted except upon a palpable refusal by a person himself plainly ordered to obey a clear command. Where there is any ambiguity, he will get the benefit of the doubt. This not unfrequently happens in the case of interlocutory injunctions.

An application of importance that some few re- Certiorari.
marks should be made upon is that for the old writ of certiorari. It commands the judge of an inferior Court to send the record to a specified superior Court. It removes only the particular action in which it is issued, and must be made returnable on a day certain in term, and is usually only applied for by the defendant, except after judgment; when if a Defendant generally applies for.
defendant has no goods within the jurisdiction of the When plaintiff.
Court which granted the judgment (which must be for over £20), the plaintiff may often with advantage remove it by certiorari, but no action can be brought upon it.

This writ is now chiefly used in criminal cases, Costs.
and 16 Vict. c. 30, s. 5, extended older statutes as to the costs of it, and enacted that whenever, in order to remove an indictment, it was awarded at the instance of a defendant, the recognizance by law required to be entered into before the issue of the writ shall contain the further provision that the defendant, if convicted, shall pay to the prosecutor his costs, subsequent to the removal of such indictment.

It was held in *The Queen v. Oastler*, 9 Q. B. D. 132, that this gave costs to a prosecutor, whether he was a party grieved or injured under the old Acts or not. One or two instances of its use are now given.

Where
same per-
son pro-e-
cutor and
judge.

In *The Queen v. Lee*, 9 Q. B. D. 394, a rule for a certiorari to bring up and quash a conviction for selling bad meat by four justices, one of whom was a member of the sanitary committee who directed the town clerk to prosecute, was ordered to be made absolute. In criminal matters the Court has no power to give costs. The principle in *The Queen v. Lee* must not be confounded with that in *The Queen v. The Bishop of St. Albans*, 9 Q. B. D. 454, because in that case a special statute made the bishop promoter and judge.

When
Court gives
costs.

Church
Discipline
Act, 1840.

Em-
ployer's
Liability
Act.

Where a plaintiff brought in the County Court an action against his employers to recover compensation under 43 & 44 Vict. c. 42 for an injury, and applied for a certiorari to remove the action into a superior Court, it was held that the power of removal should only be exercised in very exceptional cases: *Munday v. The Thames Ironworks and Shipbuilding Co., Limited*, 10 Q. B. D. 59.

Delay in
applying
for, fatal.

A writ of certiorari cannot be granted to set aside an award because matters not legally the subject of compensation had been taken into account by a jury in assessing a claim, if the time for setting it aside has expired under the Act under which it was made—e.g., The Lands Clauses Consolidation Act, 1845: *The Queen v. Sherard*, 9 Q. B. D. 741.

Borough
funds.

Under 1 Vict. c. 78, s. 44, a question relating to an order of the council of any borough for the payment of money out of the borough fund, may be removed into the Court by certiorari. This was done in the case of *Reg. v. Mayor and Corporation of Norwich*, 1882 W. N. 74.

The late case of *The Queen v. Smith*, 5 Q. B. D. ^{Appeal.} 95, decided that the Court of Appeal had jurisdiction to hear an appeal against the discharge of a rule for a certiorari. But no appeal lies to the Court of Appeal ^{When no appeal.} from an order of the Queen's Bench Division making absolute an order for a certiorari to bring up and quash an order made by justices directing the defendant to fill up an ash pit so as to be no longer a nuisance, for this order was made in a criminal cause or matter: (C.A.) *Reg. v. Whitchurch*, 7 Q. B. D. 534.

If the defendant is in custody, a writ of habeas ^{Habeas corpus.} corpus must be applied for, as the body of the defendant cannot be removed by certiorari. This writ is returnable immediately, so the certiorari is used where delay is desired. The habeas corpus, as also the certiorari, in most cases issues as of right; for instance, where a guardian appointed by a father's ^{By guardian.} will, who has a legal right to the custody of an infant, desires to obtain possession of his ward, the Court has no discretion to refuse it where the applicant is a fit person, and the child too young to choose for himself: *In re Andrew*, 8 Q. B. D. 153. It is ^{Prisoner as witness.} also used to compel the attendance of a prisoner as a witness. An application has to be made to a judge in chambers, and the circumstances stated and proved to obtain it. See, too, O. 36, r. 35.

Whether the Court of Appeal has any jurisdiction ^{Appeal.} to entertain an appeal from the refusal of a Divisional Court to issue a writ of habeas corpus on the application of a person who has been arrested for an alleged extradition crime, quære: *The Queen v. Weil*, 9 Q. B. D. 701.

Applica-
tion to
vary min-
utes.

When parties differ as to the meaning of an order as settled by the registrar, the party who is dissatisfied with the order as settled should give notice of motion to vary the minutes. The object being that the Court may know how to deal with the costs of the application: *General Share and Trust Co. v. Wetley Brick and Pottery Co.*, 20 Ch. D. 130.

Registrar's
note
should be
produced.

On the hearing of a motion to vary the minutes of an order the solicitor of the moving party ought to produce a copy of the registrar's note of what took place when the order was made: *Robinson v. Local Board for Barton*, 21 Ch. D. 631.

For in-
structions
as to mean-
ing of a
rule.

An application may be made ex parte for instructions as to the meaning of a rule: *semble* same case, where it was done, as also *In re Clagett, Fordham v. Clagett*, 20 Ch. D. 134.

Instance of
order to
dismiss.

When after a decree has been made in an administration action a subsequent will is found disposing of the estate in a different way, and probate of the old will recalled, an application must be made for an order dismissing the action: *In re Dean, Dean v. Wright*, 21 Ch. D. 581.

Misbe-
haviour of
officer.

A rule is granted by the Lord Chancellor under 23 & 24 Vict. c. 116, s. 6, calling on a coroner to show cause why he should not be removed from his office on the ground of misconduct: *In re Hull*, 9 B. D. 689.

The Court maintains its jurisdiction over its own officers, and will restrain an action against them in a proper case: *Ex parte Day, In re Potter*, W. N. 1883, 18.

The foregoing are a few instances of applications which have been lately made to the Courts about which it is not easy to find anything of practical use in the books generally used. As they have been arbitrarily chosen no system has been aimed at in their arrangement. It must however be a useful thing to note down any application which strikes the hearer or reader as being unusual. It will then serve him as a precedent if followed in a proper case. Any judicial observation as to procedure should be noted up, as for instance that of the Court of Appeal in *The Devon and Cornwall Electric Light Co.*, Solrs. J., Feb. 3, 1883, p. 215, that all that is required to prevent a petition being taken as unopposed is for counsel to state that he appears and opposes. If this statement is challenged it is for the Court to decide whether the opposition is a pretext or not: In re *The Capital Fire Assurance Association*, Solrs. J., Feb. 10, 1883, p. 235. Opposed petitions.

As to urgent applications in vacation, see O. 63, r. 11.

CHAPTER XVIII.

ON EXECUTION AND ENFORCING JUDGMENT.—I.

See Order 42.

Different
kinds of
orders.

THE mode in which a judgment decree or order is enforced depends upon whether it is (1) for the recovery or payment of money; (2) for the recovery or delivery of the possession of land; (3) for the recovery of any property other than land or money; (4) an order to do any act other than the payment of money, or in fact to abstain from doing anything; or (5) for payment of money into court; as well also as upon the character and position of the party against whom the judgment is sought to be enforced. Thus, in the case of a married woman, there could be no judgment against her personally, except perhaps when she was a trader in the City of London before the Married Women's Property Act; but a decree could issue against her in the form sanctioned by the Court of Appeal in *Pike v. Fitzgibbon*, 17 Ch. D. 454, for an inquiry as to the existence of separate estate chargeable with the claim, and to charge such estate, if any. This was acted upon in *Durrant v. Ricketts and Wife*, in the Queen's Bench Division, on January 12th, 1882. And now a married woman is practically liable upon a judgment (which can be obtained against her just as against a feme sole) to

Married
women.

the extent of the separate estate which she is not prevented from anticipating. Every person to whom any sum of money or any costs are payable under a judgment, is entitled to issue execution immediately after the judgment is duly entered, unless a period for payment is mentioned in the judgment, or the Court or a judge stays execution.

Time for
issue of
execution.

Previously to the Judicature Act at Common Law execution issued fourteen days after verdict unless speedy execution within four days was granted at the trial. In Equity a lunar month was required to elapse from the entry of the decree, before the issue of a writ of fieri facias or elegit. A judgment or order for the recovery or payment of money may be enforced (a) by a writ of fieri facias; (b) by a writ of elegit; (c) by the attachment of debts due to the judgment debtor; (d) by an order charging stock or shares; (e) by a writ of sequestration; (f) by committal to prison for a term not exceeding six weeks, under the Debtors Act, 1869. A judgment or order for the recovery or for the delivery of the possession of land is enforced by writ of possession; but see **Order 49**. A judgment for the recovery of anything besides land or money, will be enforced by (1) a writ of delivery; (2) a writ of attachment; or (3) a writ of sequestration. A judgment requiring any person to do anything other than make a payment of money, or to abstain from doing anything, may be enforced by (1) a writ of attachment or (2) by committal to prison; and a judgment for the payment of money into court may be enforced by (1) a writ of sequestration or (2) by attachment.

Before
Judicature
Act.

Judgment,
how
enforced.

Writs of
execution.

Writs of execution, i.e., writs of fieri facias capias

Attach-
ment.

elegit sequestration and attachment, are issued on production to the proper officer of the judgment, or an office copy thereof, and the officer is to be satisfied that the proper time has elapsed to entitle the judgment creditor to execution. A writ of attachment may not be issued without leave of the Court or a judge, to be applied for on notice. The rule nisi does not operate as notice, and if it is done away with, notice will be still more necessary: *Eynde v. Gould*, 9 Q. B. D. 335. Where a judgment is to the effect that any party is entitled to relief, subject to or upon the fulfilment of a condition or contingency, leave of the Court or a judge must be obtained before execution can be issued. Service of the judgment before writs of execution are issued, is not required in all cases, but where required such service must be effected personally (unless otherwise authorised by the Court).

See p. 238.

Service of judgment.

When not required.

On a judgment for the recovery or payment of money, writs of fieri facias and elegit may be issued immediately that judgment is entered, and without any service of the judgment. So upon a judgment for the recovery of the possession of land, a writ of possession, and on a judgment for the recovery of property other than land or money, a writ of delivery may be issued immediately, and without any service of the judgment.

For costs of interpleader.

Execution may not issue upon an order for payment of costs of an interpleader proceeding until fifteen days after notice of the amount of costs has been given to the party ordered to pay the same. When however the judgment requires a person to pay money into court, or to do any act (other than

the payment of money), or to abstain from doing any act, execution cannot be issued until after the judgment has been served and there has been default in obeying the same. A writ of sequestration cannot issue until after service of the judgment and default in payment according to the terms of the judgment: *Ex parte Nelson*, *In re Hoare*, 1880 W. N. 42; but no leave of a Court is necessary to issue it except in the case of costs, when leave is necessary. It issued in the case of the pension of a County Court judge in *Willcock v. Terrell*, 3 Ex. D. 323. Writ of sequestration.

And as to pensions it may be remarked that the retiring pension of a judge of a Crown colony is property which vests in the trustee in a bankruptcy, under the Bankruptcy Act, 1869, ss. 15 and 17. The question of pensions being inalienable or not is well explained in *Ex parte Huggins*, *In re Huggins*, 21 Ch. D. 91. Pensions.

Writs of *fi. fa.*, *ca. sa.* and *elegit* may be sued out at the same time; either all of the same species in different counties, or of different species, such as a *fi. fa.* and *ca. sa.*, in the same or different counties. When one has been effectually executed, nothing can be done on another till the first has been returned. Execution may issue at any time within six years from the entry of the judgment, where no change has taken place by death or otherwise in the parties; but after the expiration of six years, or where such change has taken place, leave of the Court or a judge to issue execution must first be obtained. A writ of execution, if unexecuted, remains in force for a year from its issue; but it may, before its expiration, be renewed by the Court, and Various writs can be issued together.

Execution.

Leave, when necessary.

Priorities
of writs.

a writ of execution so renewed will have effect, and be entitled to priority, according to the time of the original delivery of it; for when two or more writs against the same person are delivered to the sheriff, he must execute that first which was first delivered to him, that is to say, he must apply the proceeds of any sale under them in satisfaction of that writ which was first delivered to him.

Solicitor
should not
give sheriff
directions.

Smith v.
Keal.

It is not however proposed at this place to go into the question of priorities nor of the duties of the sheriff in seizing goods under an execution, but it may be well to mention the common practice of sheriffs' officers to apply to the solicitor issuing the execution for directions. He should be most careful not to render himself liable for giving directions to seize goods which are not the property of the debtor; all responsibility should be left to the sheriff. This matter was well ventilated in *Smith v. Kent & Sons*, 1882 W. N. 54, and the importance to the solicitor and his client of exercising discretion in it is there exemplified. See also particularly *Smith v. Keal*, (C.A.) 9 Q. B. D. 351, where Jessel, M. R., explained what is the solicitor's duty and what the sheriff's with reference to a fi. fa. *Roberts v. Death*, 8 Q. B. D. 319, is another instance of enforcing judgment wrongly. While every exertion should of course be strained to get the fruits of a judgment, yet it is most impolitic to attempt to get what the judgment creditor is not entitled to, as the debtor having nothing to lose will prove a dangerous antagonist; and being of course very hostile, will take advantage of the slightest wrong doing on the part of his opponent; the result of which may be the losing of money by

attempting to utilize a judgment instead of gaining anything by it.

After the decision in *Ex parte Abbott*, *In re Gourlay*, 15 Ch. D. 447, in which case section 87 of the Bankruptcy Act, 1869, was held not to apply to a seizure of goods under a writ of *elegit*, the number of writs of *elegit* considerably increased, as it became the practice to use that writ in almost all cases where the amount of the judgment debt exceeded £50. Bacon, V.-C., in *Ex parte Sulger*, *In re Chinn*, 50 L. J. R. Ch. 687, also reported 17 Ch. 839, held that a seizure under a writ of *elegit* of goods only, does not bring the execution within the protection of section 95, sub-section 2, of the Bankruptcy Act, 1869; and therefore when goods only (not land) of an execution debtor had been seized by the sheriff under a writ of *elegit* after the date, though without notice of the act of bankruptcy, and before the order of adjudication, that the execution creditor was not a secured creditor; and that the goods belonged to the trustee in bankruptcy by virtue of the doctrine of relation back. The considered judgment of the Court of Appeal, delivered by the Lord Chancellor, *In re Bannister*, *Ex parte Vale*, 50 L. J. Ch. 797, also reported 18 Ch. D. 157, should be consulted on this subject.

It has been already said that one of the modes provided for enforcing a judgment or order for the recovery by or payment to any person of money is by attaching the debts due to the judgment debtor. For this purpose application may be made to the Court or a judge for an order that the judgment debtor may be orally examined as to whether any

Attach-
ment of
debts.

**Examina-
tion of
judgment
debtor.** and what debts are owing to him, and for production of his books or documents. And the Court may, upon the ex parte application of the judgment creditor, either before or after such oral examination, and upon affidavit by himself or his solicitor, order that all debts owing or accruing from any other person to the judgment debtor shall be attached to answer the judgment debt. Service of such order shall bind such debts in the hands of the third person called

**Garnishee
orders.** the garnishee. The order was an order nisi, and usually went on to order the garnishee to appear and show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as might be sufficient to satisfy the judgment debt. The garnishee may pay into court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and such payment will be a valid discharge to him as against the judgment debtor, even though such proceedings may be set aside or the judgment reversed. If the garnishee does not either pay into court or dispute the debt due, or if he does not appear upon summons, then the Court or judge may order execution to issue to levy the amount. If the garnishee disputes his liability, the Court may order that any issue or question necessary for determining his liability be tried or determined; or if it is suggested by the garnishee that the debt sought to be

**Third per-
sons.** attached belongs to some third person, or that any third person has a lien or charge upon it, the Court may order such third person to appear and state the nature and particulars of his claim to such debt. And after hearing the allegations of such third person, and of any other person whom by the same or any subsequent order the Court or judge may order to

appear, or in the case of such third person not appearing, the Court or a judge may (1) order execution to issue to levy the amount due from such garnishee; (2) order any issue or question to be tried; (3) bar the claim of such third person; or (4) make such other order as the Court or the judge shall think fit, upon such terms in all cases in respect to the lien or charge (if any) of such third person, and to costs, as the Court or the judge shall think reasonable.

The question, What is a debt due or accruing to the judgment creditor which is capable of attachment was very elaborately and ably argued in a recent case, *Howell v. The Metropolitan District Ry. Co.*, L. J. R. 51 Ch. D. 158, and in it all the previous cases are discussed. The late case of *Gordon v. Jennings*, 9 Q. B. D. 45, decided that the salary of a secretary could be attached, if actually due, notwithstanding the Wages Attachment Abolition Act, 1870. It must not be forgotten too that there are salaries and pensions which are assignable. In fact the true rule is that salaries and pensions are assignable except when it would be contrary to public policy, as where payments are made to induce persons to keep themselves ready for the service of the Crown, as the half-pay of officers in the army or navy, or payments for actual service rendered to the Crown; or pensions like the retiring allowance to a beneficed clergyman, which are by statute expressly made not assignable. In *Ex parte Huggins*, *In re Huggins*, 20 Ch. D. 91, the salary of a retired judge of a Crown colony was held to be property which vests in the trustee in bankruptcy. But an equitable interest, such as a share of income from a trust fund when nothing is due

Debt due
or accru-
ing.

Wages
Attach-
ment Abo-
lition Act.

Equitable
interest.

under it, cannot be attached. See *Webb v. Stenton*, Solrs. J., June 16, 1883, p. 593 ; W. N. 1883, p. 108. Nor can a debt due from a partnership firm described by its partnership name : *Walker v. Rooke*, 6 Q. B. D. 632.

It is strange that the useful provision for the examination of a judgment debtor as to the debts owing to him is not more generally used in practice. If the examination were effectually conducted some information which would benefit the judgment creditor would probably be elicited by it.

Debtor's
summons.

Another way of making a judgment debtor pay if he possibly can, is by taking out a debtor's summons against him. It is not right to resort to this means unless a *fi. fa.* or *elegit* has already been issued against him, and there has been a return of no goods ; but in such a case it is quite legitimate, and will probably either cause payment to be made, or the non-payment under it will become an act of bankruptcy upon which the debtor can afterwards be adjudicated bankrupt.

Charging
orders.

The proceedings for obtaining an order charging stock or shares are prescribed and their effect provided for by the 1 & 2 Vict. c. 110, ss. 14 & 15, and 4 Vict. c. 82, s. 1. It may be stated generally, that when a judgment debtor has Government stock, funds, or annuities, or any stock or shares of or in any public company in England (whether incorporated or not), standing in his name in his own right, or in the name of any person in trust for him, a judge may, on the application of the judgment creditor *ex parte*, make an order nisi that such stock, &c., shall stand charged with the payment of the amount of the judgment. Service of such order shall restrain the Governor and Company of the

After ser-
vice no
transfer.

Bank of England, or public company, from permitting a transfer of the stock. The order is made absolute, unless the judgment debtor shows sufficient cause to the contrary. The order nisi entitles the judgment creditor to all such remedies as he would have been entitled to if a charge had been made in his favour by the judgment debtor, but he cannot take proceedings to have the benefit of it until after the expiration of six months from the date of the order. Section 1 of 3 & 4 Vict. c. 82 extends the power of charging to reversionary interests, and the annual produce as well as the principal and funds standing in the name of the Accountant-General as trustee for the judgment debtor. Under the new Rules the rule nisi is abolished. See p. 97.

As to the interest in stock vested in trustees for a judgment debtor and others which is chargeable, see *The South Western Loan and Discount Co. v. Robertson*, 8 Q. B. D. 17.

Order 46, r. 2a, et seq., sufficiently explain the use of the writ of distringas. These rules came into operation in April, 1880. See also *In re Blaksley*, Solrs. J., April 21, 1883, p. 418.

Where judgment has been recovered against a partnership firm in the name of the firm the plaintiff may bring an action on the judgment against the individual members of the firm, and is not confined to the remedy given by Order 42, r. 8: *Clark v. Cullen*, 9 Q. B. D. 355. See also *Ex parte Young*, 19 Ch. D. 124.

There now remains the *ca. sa.* to be mentioned. Since the abolition of imprisonment for debt, this mode of enforcing judgment has become the last means resorted to by the plaintiff to recover a debt. After he has issued one or more of the other writs

Instance
of its use.

of execution to find perhaps that although the judgment debtor is carrying on business upon large premises, and possibly occupying a country house as well, he has "no goods;" he may yet discover that it is difficult or even impossible to satisfy the judge that the debtor either has or has had since the date of the judgment the means to satisfy it, and has refused or neglected or still refuses or neglects to do so; and this is necessary before he can obtain an order to commit him to prison. In a recent case, a firm of wholesale merchants sued a retail tradesman, who carries on business in a house in London at a rental of £60, and the defendant resisted the action on the ground that the period of credit had not expired until the day previous to that fixed for the trial, when his solicitor consented to judgment. Judgment was signed and the costs taxed, and in default of payment execution issued. It was then found that several executions had priority, and the landlord claimed a year's rent, while there were not sufficient goods to pay the landlord. It was ascertained that it was a custom with certain persons in the defendant's trade to transfer goods from one to another, when one was likely to be more pressed than another, and constantly to be in arrear with rent for twelve months. Three weeks after execution a summons to obtain the defendant's committal was dismissed, notwithstanding that evidence of trading employment of workmen, &c., was given; the learned judge remarking that the defendant had not been given time to satisfy the judgment. And neither the judgment debt nor the costs have been paid to this day; and yet the defendant continues to carry on his business as before. He had kept the plaintiffs at bay four months, and had caused them to run up a bill of

costs. This case is an illustration of the difficulty in enforcing a judgment by the aid of a *ca. sa.* Here we have one of the many wise changes now proposed to be introduced for the first time. Debtor's summonses may some day be heard in the Bankruptcy Court; and the Law Society's Committee have suggested, with practical sagacity, that the onus of proof of want of means should be thrown upon the debtor. In the face of cases like *Chard Bros. v. Jervis*, which has been referred to, can this suggestion long be resisted?

Another mode of enforcing judgment, which is not resorted to nearly as much as might have been expected, is that called equitable execution. It only applies when the debtor is possessed of some equity or equities of redemption, and the judgment creditor has issued execution by *elegit*, and there has been a return of no goods. It is easy to imagine the case of a debtor, originally a man of property, who has mortgaged all his estate, and who yet from having the equity redemption may be worth something—at all events, this may be the only thing out of which the debt can be satisfied. To get equitable execution, there should be an application for a receiver; if possible in the original action; or a writ can be issued in the Chancery Division, to have it declared that, under his judgment, the plaintiff is entitled to a charge upon all the lands and hereditaments whereof the defendant is possessed or entitled for any estate or interest in equity or at law, whether in possession, reversion, remainder, or expectancy, and in particular upon his estate and interest in any hereditaments he may be shown to have the equity of redemption of; and to have such sale enforced by sale, foreclosure or de-

Equitable
execution

Receiver

livery in execution or otherwise, as the Court may direct. One of the last cases upon this subject is *Smith v. Cowell*, 6 Q. B. D. 75 ; but the most useful one is the *Anglo-Italian Bank v. Davies*, 9 Ch. D. 275. The importance of the subject upon which this chapter treats cannot be overrated, but want of space has made it necessary to omit many cases which would have illustrated the statements contained in it.

Judgment
for reco-
very of
possession.

A judgment for the recovery or delivery of possession of land is enforced by writ of possession : Order 42, r. 3 ; but an order for foreclosure absolute does not make the plaintiff entitled to this : *Wood v.*

Form of
order for
sale in
foreclosure
action.

Wheater, 22 Ch. D. 281. When at the trial of a foreclosure action a sale is asked for, and the mortgagor does not appear, an account of what is due to the plaintiff is ordered to be taken, and then the judgment goes on "that so much of the property be sold as will be sufficient to satisfy the debt": *Wade v. Wilson*, 22 Ch. D. 235.

Attach-
ment of
moneys.

On the attachment of moneys generally, the case of *In re Cowan's Estate*, 14 Ch. D. 638, and the remarks of V.-C. Hall therein as to the paucity of cases on this subject, may be studied with advantage.

Sequestra-
tion.

As regards sequestration, *Miller v. Huddleston*, 22 Ch. D. 233, decided that where it had issued against a man his balance at his bankers might be attached under it, and that the Court had jurisdiction to order the bankers to verify and pay the balance to the sequestered account.

CHAPTER XIX.

ENFORCING JUDGMENT.—II.

It is now proposed to consider what seems still to be a want in our judicial system, viz., some means of making a judgment debtor who can pay, do so as quickly as possible. The Incorporated Law Society's Committee being practical men, touch upon this in their resolution, "that a uniform procedure in all Courts should be adopted as to judgment summonses, casting the onus of proof of want of means on the judgment debtor." This however does not go far enough. A judgment debtor for any sum over £100, so far from being really an object of pity, is either a person who does not know when he is beaten, or a man with sufficient self-reliance and obstinacy to try to fight against the law of the land.

It is thought that a different system should apply to small and large judgment debts. For in the case of a debt of a substantial kind, it is a great hardship that the debtor should not either pay at once, or give security for payment by instalments, or else be made a bankrupt inexpensively and at once.

Without wishing to attempt to deal with the faults of our bankruptcy system, which must be apparent

In judgment summonses onus of proof to be changed.

Small debts.

Bankruptcy practice.

to all, especially as Mr. Chamberlain's new bill appears to deal with many of them, it is pretty plain that no man who has exhausted all his other remedies to get in a debt of £100, will spend £20 or £30 more to make the debtor a bankrupt, unless he is actuated by feelings of personal dislike to him—in other words, he will not do so as a matter of business.

The married partner's case.

Let us take a case which frequently occurs in practice. A married man, a partner in a business which does not require credit, is a judgment debtor for £100. The office furniture of course belongs to the partnership, and the furniture at his private house is in settlement. Supposing his chattel interest in the office furniture, &c., is put up for sale, the partner buys it for a nominal sum, which is eaten up by the costs of the sheriff—another relic of past barbarity—or the debtor puts on a petition, the result of which is a liquidation; and eighteen-pence in the pound, payable by instalments, secured by bills accepted by himself, is the dividend declared. Why should not the non-payment of a judgment debt for one month, or failure to compound with the creditor, be in itself an act of bankruptcy? Then none of the troubles incident to a debtor's summons would be necessary in the case of such a judgment debt.

The judgment debtor then goes on comfortably in England, in the receipt of a good income laughing at the man who trusted him, and may not have even to liquidate; but in India he goes to prison, though the judgment creditor has to pay him maintenance money while there; and he cannot come out without

filing his petition. Two apologies are usually made for this state of things.

A learned judge of a small debts Court is reported to say that the system of credit is the root of all evil, and that if a man is not "trusted," he cannot owe money. However well the ready-money system may work in private life, it cannot be applied to business. Men have not capital enough to pay money down for stock which they will not sell for perhaps a year; and it has not of course anything to do with a common class of debt, namely that where money has been lent by friends to a man in acknowledged temporary trouble.

Evils of credit.

The other apology is, that our law theoretically has provided a machinery for squeezing the debtor as dry as it is right and just that a man should be squeezed; and that this machinery being worked by a judge is not likely to be improperly or ineffectually applied.

But how often in practice is a debtor examined as to what debts are owing to him? How often is he ordered to pay anything appreciable a week as he should be, and sent to prison if he cannot prove that he has not had the means upon the particular occasion that he makes default to pay the instalment ordered.

Examination of debtor.

A judgment creditor is looked upon at chambers at present as a person who, by his own laches, has got into the difficulty; and latitude is granted to the debtor, who in the end never pays at all, glories in his escape, and becomes at length a dangerous person preying on society at large. Such a man is generally

Difficulty
of getting
receiver
appointed.

on pretty good terms with the sheriff's officers, and certainly proceedings are not carried out against him, as they should be, with the utmost rigour of the law. Costs are incurred in suing him, and the result is that too often the criminal law is wrongly resorted to, instead of civil proceedings, as the only effectual way of compelling a settlement. The result of debtors' summonses has been shown to be unsatisfactory, and it is most difficult to obtain the appointment of a receiver until, as the judges say, the creditor has exhausted all his proper common law remedies. It is the expense to which a creditor has to put himself to get judgment, and after getting a judgment to try to get the fruits of it, before any real pressure is allowed by the Courts to be put upon the judgment debtor, that prevents this class of persons from being the marked men they should be for the protection of society at large.

Registra-
tion of
judgments.

It would perhaps be impracticable for every judgment debtor of £100 or more, who has not paid or compounded for the judgment debt within one month, to be obliged to affix to his name some mark when using it in business, as "limited" is affixed to that of a limited liability company; but it is idle to suppose that the list of judgments is searched, or will ever be searched by persons in trade, before dealing with a man who is a judgment debtor. In fact few judgments are now registered at all. Some system by which the man who can pay and won't pay must be made to pay is what we want and what we should have. If this proposal goes too far, let the spirit of our law, as regards imprisonment for debt, have its free course. A man has no business to be able to protect himself, by a marriage settlement for example,

and then to become a free lance in trade. He should be obliged to have his letter of mark endorsed. He has nothing to lose and everything to gain, and is as unprincipled as the wildest speculator on the Stock Exchange. There no arrangement is allowed by which his fellows have a prior claim upon his assets: *Tompkins v. Saffery*, 3 Ap. Ca. 213. Why should the wife or the partner of the judgment debtor be favoured beyond other creditors?

But to return to practical suggestions. The sheriffs' work is done by the wrong class of men. They often fraternise and collude with the judgment debtor. See Law Journal, 15th October, 1881, p. 468. Their pay is far too great. Greater publicity should be given to judgments. The judgment debtor should be made unable to get credit from other people. If he has actually or potentially power over money, he should be made to exercise it for the benefit of his judgment creditor.

It is true that no Court should order a man to do what it cannot make him do. It would be idle to order a cantatrice to fulfil an engagement to sing, or a painter, who can earn £10 a-week by his painting, to paint even £5 worth of work; but the former is if she has broken a contract, and the latter should be if a judgment debtor, restrained from selling his services to any one but his creditor, unless he can come to terms with him. If legislation is not directed towards supplying an omission in our system of procedure we too often try to remedy it in a wrong way. Bowen, L.J., says in *Quartz Hill, &c. v. Eyre*, 31 W. R. 671, that three kinds of abuses to get money have increased in number: police court proceedings to

extort money, debtors' summonses, and winding-up petitions. As those who are unfortunate enough to have these instruments of torture applied to them wrongfully are unable by want of means to bring actions, which certainly lie, against their tormentors, they are persisted in. Not only should this be prevented, but other means should be given creditors of enforcing their judgments in legitimate ways. Compare the following cutting from a daily paper in the present year, which may, however, be thought a rather strong expression of judicial opinion:—

LORD MAYOR'S COURT, JULY 7.

(Before Mr. WOODTHORPE BRANDON, Assistant-Judge.)

CAUTION TO CREDITORS.—In several judgment summons cases the debtors complained that the plaintiffs had gone to their employers, and thereby imperilled their situations.—His lordship said he would not for a moment tolerate such a proceeding. Were a debtor's means of livelihood to be taken away from him because of circumstances over which, probably, he had no control, and was he to be at the mercy of every rapacious creditor? So long as he (the learned judge) held a seat on the Bench he would set his face determinedly against such a system, and in every case where it was proved that the creditor had gone to the debtor's employer he would make an order for one penny a year.

These observations are of course crude, and are only offered to induce those who have thought long and seriously upon the subject to offer practical criticisms upon them, that a change may be wrought which is so much needed in a direction unpopular it is true, but none the less requiring thorough re-organisation.

CHAPTER XX.

APPEAL.

THE new Rules having made no alteration in the system of procedure as to appeals, the practice under them will be the same as that under the Judicature Acts.

First, then, it may be observed that the power of the Court of Appeal is not limited to allowing or refusing an appeal, but that it can give costs or not just as a Court of first instance. And although a successful appellant generally gets his costs—Memo., 1 Ch. D. 41—this is by no means always the case, and the Court will go into all the facts of the case before it upon the mere question of who should pay the costs of the appeal. Thus Lord Coleridge, C.J., in *re Chapman*, 10 Q. B. D. 56, says that he is very anxious not to do injustice to this particular appellant, who being under the impression that the 14th rule (Costs) did not apply to such a case as that before him, did not do what he might have done when before the Court below. Therefore although this appeal ought to have been dismissed with costs, it was so dismissed without prejudice to his making an application to the Court below. For example, it is submitted that when there is a reported case which has not been overruled which would appear to authorise an appeal, the appellant will not have to pay the costs: cf. *In re Butler's Wharf Company, Anderson*

Powers of
Appeal
Court—
Costs.

Dismissal
without
prejudice
to applica-
tion to
Court
below.

When re-
ported
case mis-
leading.

v. Butler's Wharf Company, 21 Ch. D. 177, where Hall, V.-C., said, "I will not order the liquidator to pay costs here, the case which has been referred to being a ground for making this motion."

Where costs refused.

In *Chard v. Jervis*, 9 Q. B. D. 183, the costs of a successful appellant were refused, to mark the disapprobation of the Court of Appeal of his conduct, and because he succeeded upon evidence which was not before the Court below.

Leave to appeal when rescinded.

And when special leave to appeal is granted it is liable at any time to be rescinded with costs if it contains any mis-statement or any concealment of facts which ought to have been disclosed. In *Muscovite Bank v. Raynor*, 7 Ap. Ca. 321, the appeal was heard and allowed but without costs, as there appeared to be no intention to mislead, although there were mis-statements of fact which affected one of the three grounds upon which the petition for leave to appeal relied.

Interlocutory appeals discouraged.

"It is very important that time and money should not be wasted in appeals on interlocutory matters, and I have therefore always set my face against appeals from the discretion of the judge in matters of procedure," said James, L.J., in *Davy v. Garrett*, 7 Ch. D. 486.

Appeal a re-hearing.

The Judicature Act, Order 58, says that an appeal is to be a re-hearing (see Jessel, M.R.'s, judgment, *Quilter v. Mapleson*, 9 Q. B. D. 676), and that it is to be by notice of motion from the whole or any specified part of a judgment or order; and so every order would seem to be appealable, unless there is some provision that it is not to be subject to appeal. The onus lies on the side asserting that an order

All orders prima facie appealable.

cannot be appealed against to prove his case. See Judicature Act, 1873, s. 19, and Jessel, M.R., *In re Chennell, Jones v. Chennell*, 8 Ch. D. 501; and in *Pollock v. Rabbits*, 21 Ch. D. 468, the same very learned judge says, "A judge's order is always subject to appeal unless it is expressly forbidden."

It must not be forgotten that the Court of Appeal in Chancery does not in general interfere with the discretion of the judge of first instance. Not, as was once remarked by James, L.J., that it has not complete jurisdiction over such cases, or that the decision of the Court below would not be overruled where serious injustice would result from it. The reason is that the discretion of the judge decides so many interlocutory applications, which if appealed continually first from the master to the judge in chambers, then from the judge in chambers to the Divisional Court, and from it to the Court of Appeal, would take up so much time that actions could never be tried and the expense would be enormous. If, however, the judge has proceeded upon a wrong principle, the discretion he exercises is one which he has no power to exercise, and the Court of Appeal is bound to review his decision in order to lay down the principle on which such discretion should be exercised: Cotton, L.J., in *Fisher v. Owen*, 8 Ch. D. 653. He goes on to say however that the Court of Appeal ought to discourage appeals from the exercise of the discretion of a judge when he has gone upon a right principle. See *Chard v. Jervis*, 9 Q. B. D. 181, and *Sparrow v. Hill*, 7 Q. B. D. 362, for another example, viz.: as to the way to object on appeal to the principle of a taxation as opposed to the items of it. As to the power of the Court of Appeal to review

Discretion
how far
appeal-
able.

Where
principle
wrong.

Instances.

the discretion of a judge, see in particular *Ormerod v. Todmorden Mill Co.*, 8 Q. B. D. 664, where the Court was divided on the point.

Question
may be
whether
discretion
arises.

Again there may arise the question, which may be of very considerable importance, whether the judge has any discretionary power in the first instance at all.

Instance.

As an instance of this if a judge of first instance deprives a mortgagee or a trustee of his costs an appeal lies, for such costs are not in the discretion of the Court, their right being a matter of contract, although they may be deprived of them for misconduct: *Turner v. Hancock*, 20 Ch. D. 306. And see also the provisions on this subject in the new O. 65.

Where
leave
necessary.

But besides orders in the case of which the judge has a discretionary power which he has exercised, and which the Court does not think it would work a serious injustice not to overrule, there are others which cannot be brought before the Court without leave. For example an order made by consent: Jud. Act, 1873, s. 49; (consent, however, may be withdrawn before an order is passed and entered: *Rogers v. Horn*, W. N. 1878, 41, M.R.) or the summary decision of an interpleader by a judge at chambers. In *Turner v. Bridgett*, 9 Q. B. D. 57, which was an appeal from the Queen's Bench Division upon an interpleader summons referred from chambers to the Court by Stephen, J., the Court of Appeal held that as no issue had been directed, the Divisional Court had dealt with the matter in a summary manner, and that therefore the judgment of the Queen's Bench Division was final, and there was no right of appeal. Indeed the judge cannot, even with the consent of the parties, give a right of appeal: *Dodds*

Inter-
pleader.

v. Shepherd, 1 Ex. D. 75; though some doubt was thrown upon this case by Jessel, M.R., in *Ex parte Streeter*, *In re Morris*, 19 Ch. D. 220, which decided that any order in interpleader made by the chief judge in bankruptcy can be appealed from. See however the judgment of Brett, L.J., in *Turner v. Bridgett*, 9 Q. B. D. 57.

Another case in which the Court of Appeal is loth ^{Witness cases.} to interfere is where the evidence is oral and there is a conflict, and the judge of first instance has given an opinion on one side. Then unless it sees some clear evidence of mistake or a gross miscarriage of justice it will not interfere: Jessel, M.R., in *Smith v. Chadwick*, 20 Ch. D. 60. When there are two witnesses against two witnesses who are swearing exactly contrary to each other, and the judge of first instance who saw the witnesses says that he believes the two who made one statement, and does not believe the other two, it is not the practice of the Court of Appeal to overrule the decision of the Court below. A sufficient note of the cross-examination of ^{Practica} witnesses must be furnished to the Court of Appeal, such as a shorthand note or counsel's note, or even the solicitor's note verified by affidavit. If these cannot be obtained or are lost, the Court of Appeal may by way of indulgence allow the evidence to be taken over again, if a proper application is made to it to do so: *Ex parte Firth*, *In re Cowburn*, 19 Ch. D. 426.

As to leave to appeal after there has been a great ^{Lapse of time.} lapse of time, see *Pearth v. Marriott*, 22 Ch. D. 182.

Again, the amount that will be allowed by a taxing ^{Witness's allowance.} master to a witness (a country solicitor)—*In re Foster*, *Ex parte Dickens*, 8 Ch. D. 598—or for ^{Fees.} counsel's fees, is a matter for the master's discretion, and the Court will not interfere with it or with

- other matters which are purely in his discretion, as instructions for brief, copies of documents for counsel and refreshers, and payments to witnesses for qualifying themselves: *Turnbull v. Janson*, 3 C. P. D. 270. Indeed as to costs pure and simple, it must be held that the Court of first instance has absolute discretion over them; to such a degree as that the Court of Appeal has refused (when A. appealed a decision dismissing his bill without costs) an application, under Order 58, r. 6, by B., that in the event of the decision being upheld, the bill might be dismissed with costs. James, L.J., said that the Court had no power to alter the direction of the Vice-Chancellor as to costs which were entirely within his discretion as section 49 was imperative, but he dismissed the appeal with costs. An appeal lay as to whether costs should be taxed on the higher or lower scale; In re *Tarrell*, 22 Ch. D. 473 (C. A.); but query now. See the provisions mentioned above in O. 65.
- Again there is no appeal to the Court of Appeal in the case of an action remitted to the County Court, unless special leave to appeal is given: *Bowles v. Drake*, 8 Q. B. D. 325. There is also no appeal in the case of an order as to costs only, or to an order made by consent. See p. 282.
- An order is none the less an order as to costs only because it goes on to direct how they are to be paid, whether out of a fund or by an individual, or by a corporation, or in any other manner. Order 55 provided what costs are in the discretion of the Court, and the charges and expenses of trustees were not (nor are they now) such costs: In re *Chennell*, 8 Ch. D. 502.
- An order that a solicitor personally pay costs cannot be appealed: In re *Milton Bradford*, W. N. 1883, 112.

Instruction for brief, &c.

Appeals for costs.

Higher or lower scale.

From County Court.

What are orders as to costs.

Personal order on

If the mode of payment is indicated this makes it no less an order as to costs only. But where the Court gave trustees their costs, charges and expenses, this order was held a fit subject for appeal. And this principle is still acted upon rigidly. Jessel, M.R., said, in a late case: "If we were to vary the order of the Court below as to costs, when an appeal on the merits fails, we should practically be allowing an appeal for costs only, and appeals would be brought nominally on the merits, but really only for the purpose of varying the order as to costs. We ought not to depart from the general rule." And Baggallay, L.J., said: "I have no doubt about the bona fide character of this appeal, but we must follow the rule that there shall be no appeal upon the question of costs only" (*Harpham v. Shacklock*, 19 Ch. D. 215). ^{Trustees' charges and expenses.}

A strong reason why this course is adhered to is, because the judge before whom the case is first tried can give leave if he likes to appeal upon the question of costs; and it is clear that under Order 58, r. 5, the Court of Appeal had no power to do so, for that rule only gave power to vary the decree in a matter which is the proper subject of appeal. The only safe way to appeal for costs where an action has been dismissed without costs is, by obtaining leave from the Court to appeal on the question of costs, and this application should be made at the time of the dismissal of the action; and such leave will not be given on the application of the defendant after the plaintiff has given notice of and has set down an appeal from the dismissal of his action: Bacon, V.-C., *May v. Thompson* (2), 1882 W. N. 53. ^{Leave to appeal as to costs.}

The late case of *Johnstone v. Cox*, 19 Ch. D. 18, ^{*Johnstone v. Cox.*}

Costs of
incum-
brancers.

which may perhaps appear at first sight to be an exception to this rule is not really so. There an appeal as to costs was allowed really because the Court below had exercised a wrong discretion, or in other words had acted upon a wrong principle in its decision as to costs ; and further than that, the result of the order would have been to sweep away the entire fund, which was the subject-matter of the suit, and this would of course have been as Jessel, M.R., said, a parody on the administration of justice. There in the Court below the costs of an incumbrancer had not been allowed to be added to his security, though there had been nothing vexatious or unusual in his conduct. The ignoring of the rule as to the costs of incumbrancers being added to their securities would have had the effect alluded to, and so an appeal for costs was allowed.

Trustee's
appeal for
costs.

That a trustee may appeal for costs may perhaps be gathered from the concluding observations of Jessel, M.R., in *Ex parte Wainwright*, *In re Wainwright*, 19 Ch. D. 153, the practice being that if he does nothing wrong he should have his costs, and therefore it is the principle upon which the discretion of the judge in the Court below has been exercised which is appealed from, and not the mere exercise of it as to costs in the isolated case appealed.

Fresh case
on appeal.

Judgment
set aside.

Moreover, the Court does not allow an appellant to raise a case altogether different from and contradictory to the one at the first hearing, and it will not re-hear appeals ; as a new action to have the judgment set aside is the way to get this done.

All parties

If all the parties affected by an appeal are not

served, the Court will direct the hearing to stand ^{to be served.} over for that purpose.

When an order is not subject to an appeal, the ^{Re-hear-} same result cannot be arrived at indirectly by means ^{ing.} of a re-hearing; but if it is, a re-hearing will be ordered when that is the more convenient course: *Ex parte Streeter*, *In re Morris*, 19 Ch. D. 223.

The determination of appeals from inferior Courts ^{From in-} by the Divisional Court under Judicature Act, 1873, ^{ferior} section 45, is final, unless special leave to go to the ^{Courts.} Court of Appeal is given by the Divisional Court. Questions have often arisen as to when a case remitted from the superior Courts to the County Court becomes a County Court case, and therefore is capable of appeal beyond the Divisional Court; but it is now decided by *Bowles v. Drake*, 8 Q. B. D. 325, that when a cause has been remitted because the plaintiff has no visible means of paying the costs of the defendant if he loses (under section 10 of County Court Act, 1867), there is no appeal beyond the Divisional Court, unless special leave is given.

When there is an appeal about a very small sum, ^{Small} the Court will be unwilling to interfere if there is not ^{sums.} involved in the matter a question of general importance which may be of consequence in practice; nor upon a question of fact in a witness case, because the ^{Questions} Court below has had the opportunity of seeing the ^{of fact.} parties face to face, and could judge of the witnesses' demeanour: *Abercrombie v. Jordan*, 8 Q. B. D. 192. See p. 283.

An adjournment from a chief clerk to the judge is ^{From chief} not in the nature of an appeal, as it is the right of a ^{clerk to} judge.

suitor to have any proper point heard by the judge personally ; and he ought not to have to pay the costs of so doing necessarily : In re *Watts, Smith v. Watts*, 22 Ch. D. 12 ; see also *Upton v. Brown*, 20 Ch. D. 732.

Where one party has asked too much, and the other party has offered too little, the justice of the case is often met in the Court of Appeal by giving no costs there or in the Court below : Baggallay, L.J., in *Emden v. Carte*, 19 Ch. D. 321. In a proper case though an appeal is dismissed, the costs of both parties may be allowed, as well as in the Court below : *Ex parte Wainwright*, quoted above.

New evidence.

New evidence may be adduced at the hearing of an appeal. The best way is to give notice to the other side that special leave to do this will be asked for when the case comes on, as it is less expensive than to give a separate notice of motion for leave to have further evidence heard, and it is generally more convenient that the Court should know something about the case before it decides upon such a motion ; but there must be a strong reason given for admitting it : Jessel, M.R., In re *Chennell, Jones v. Chennell*, 8 Ch. D. 505. If witnesses have to be subpoenaed on an appeal, it is necessary to apply by motion previously to the hearing of the appeal ; but the Court is very careful not to encourage perjury by permitting fresh evidence to be brought forward after the trial of an action, when the exact point upon which evidence is wanted has been discovered.

Reason for discouraging.

Technicalities.

This indulgence is more likely to be granted when what appears to be a substantially good and honest

case is in danger of being defeated on technical grounds than in favour of an attempt to defeat a good case on technical grounds. Because the case might have been shaped better in the Court below, is no ground for leave to adduce fresh evidence before the Court of Appeal: *Sanders v. Sanders*, 19 Ch. D. 381. *Sanders v. Sanders.*

And if at the trial of an action witnesses have been examined viva voce, further evidence by affidavit of the same witnesses will not in general be admitted on appeal: *Taylor v. Grange*, 15 Ch. D. 165. Further evidence of same witnesses.

From *Ex parte Firth*, *In re Cowburn*, 19 Ch. D. 419, it appears that it is the duty of an appellant to bring before the Court of Appeal the whole of the evidence, oral as well as written, on which the order appealed from was founded, and if he does not do this his appeal ought to be dismissed.

The Court of Appeal however has power by way of indulgence, in a case where a note of oral evidence has been accidentally lost, to allow that evidence to be taken over again. See p. 283.

An appellant will not be allowed to raise in the Court of Appeal a point which he did not raise in the Court below, even though there is some evidence in support of it, if the nature of that evidence is such that by any possibility the respondent might have been able to rebut it if the point had been raised originally. And see particularly the remarks of Jessel, M.R., in *Ex parte Firth*, at p. 426. New points.

As a rule when an appeal from a judge in chambers Appeal

from judge in chambers. is desired this should be notified to him at the time, that he may adjourn the summons into Court for argument or judgment. If this is not done, there should be a motion to set aside the order made in chambers—the object being that the judge may have an opportunity of delivering a judgment which would enable the Court of Appeal to understand the reasons for his decision: *Holloway v. Cheston*, 19 Ch. D. 516. But V.-C. Hall declined to follow this course In re *Butler's Wharf Co.*, 21 Ch. D. 131. This remark applies strictly only to the Chancery Division.

Time. As to the time within which appeals must be brought, four days only are allowed during which Master's order. any person affected by a master's order may appeal therefrom to a judge in chambers. The summons must be returnable within the four days: *Bell v. North Staffordshire Ry. Co.*, 4 Q. B. D. 205; unless there is no judge sitting at chambers within the four days; in which case the summons must be returnable for the first day when any judge would sit at chambers: *Gibbons v. The London Financial Association*, 4 C. P. D. 263.

To Divisional Court. Eight days are given by General Orders, Judicature Act, 1875, for an appeal to the Divisional Court from an order made by a judge at chambers. In vacation. This limitation of time does not however affect the right to appeal against an order made in vacation at chambers when no Divisional Court would be sitting within the eight days: *Wallingford v. Mutual Society*, 5 Ap. Ca. 685.

Time to appeal not extended. And leave to appeal after time will not be granted now, as the rules have become more stringent, unless the respondent has done something to give a sort of

equity to the appellant to go beyond the period. The grounds upon which an appeal after time should be allowed were discussed in *Carter v. Sheffield*, 21 Ch. D. 6. See also *In re New Callao*, 22 Ch. D. 484 (C. A.) There must be conduct on the part of the respondent such as to raise an equity against him. *In re Mansell*, 7 Ch. D. 74.

As to the granting of an extension of time, see *In re Leonard Jacques*, 18 Ch. D. 392, where an order is within the letter though not the spirit of Order 58, r. 9.

Twenty-one days only are allowed for appeals from chambers or interlocutory orders, and a year for other appeals. Interlocutory orders.

The practice on the Common Law side as to discharging an order made in chambers is by notice to the Divisional Court, and in Chancery by notice to the judge sitting in Court.

The time runs, where the order is a refusal or dismissal, from the date of such refusal, but where the order is a substantive order, from the time when the order was drawn up, by signing entry or otherwise perfecting it, and not from the time when it was pronounced; but the time in bankruptcy dates from the making of the order: Lindley, L.J., in *Heatley v. Newton*, 19 Ch. D. 341. Refusal or substantive order.
Bankruptcy.

The disallowance of a claim brought in an administration in answer to advertisements for creditors issued under a judgment for administration is a refusal within the meaning of Order 58, r. 15, from which an appeal can be brought and no order need be drawn up: *In re Clagett, Fordham v. Clagett*, 20 Ch. D. 134. When order need not be drawn up.

Final or
interlocu-
tory.

A question often occurs as to whether a judgment is final or interlocutory, and a final order may be made upon an interlocutory proceeding. Orders finally determining the rights of parties may be interlocutory; the form of the proceeding only has to be looked at. (But see *Sherbrook v. Tufnell*, 9 Q. B. D. 621.) An order which is interlocutory, though made upon the same piece of paper as a final order, must be appealed within twenty-one days: *Cummins v. Herron*, 4 Ch. D. 788. The reason why there is so great a difference between the time allowed in the one case, and in the other may be illustrated by the case of a common administration suit. The testator's estate must of course be cleared from all claims before the final order on further consideration can be made. If a year was allowed to appeal every claim the final order would never be obtained; and yet each of the orders made upon these claims determines the rights of the parties; and therefore the disallowance of the claim. In *re Clagett* had to be appealed within twenty-one days.

An order to sign judgment on a specially endorsed writ is not a final judgment, for it requires perfecting by the further step of signing the judgment.

Special
leave.

Special leave to extend the time to appeal will not be given on an ex parte application; but to save expense leave may be given by a Chancery judge in chambers to appeal direct to the Court of Appeal. And special leave will not be given except in very special cases, for James, L.J., has said that the right of the suitor is *ex debito justitiæ* to keep his enrolment of a decree if it was made in due time, unless in very special cases; as for instance where there

was anything like misleading on the part of the other side, or where a party was misled by an officer of the Court, or where some sudden death would account for the delay; not when the applicant has made a mistake as to the particular day, for then there would be laches. See p. 291. Not when mistake made.

In order to be allowed to appeal, security for costs will be ordered by the Court of Appeal under special circumstances; but unless the respondent asks for it, no security has now to be given, though before the Judicature Act a deposit of £20 was required in every case. Security will always be ordered if it is proved that the appellant appears unable to pay the respondent's costs if the appeal should be unsuccessful. Only a small sum will generally be ordered, less in fact than the actual costs—perhaps £30. The fact that an appellant would be unable through poverty if unsuccessful to pay costs, is in itself enough grounds for requiring security: *Harlock v. Ashberry*, 19 Ch. D. 84. Poverty of appellant.

Defendants who allow judgment to go by default cannot appeal, except perhaps in a special case: *Allum v. Dickenson*, (C. A.) 1882 W. N. 101.

One of several plaintiffs can appeal: *Beckett v. Attwood*, L. R. 18 Ch. D. 54.

A stay of proceedings during an appeal to the House of Lords is only granted upon terms. In *Brewer v. Yorke*, 20 Ch. D. 669, an order was made directing a sum of Consols in court to be sold, and the proceeds were ordered to be re-invested after sale, but before payment out, on condition of the appellant's undertaking if his appeal was unsuc- House of Lords.

cessful to make good the difference between the income produced by the fund and interest at four per cent., and to pay the costs of sale and re-investment.

Leave to
appeal to
House of
Lords.

With reference to leave to appeal to the House of Lords, the observations of Jessel, M.R., in *Ex parte Allen*, In re *Fussell*, 20 Ch. D. 350, are much in point, and the reader is referred to them in the report of the case.

Security.

In the Common Law Courts, unless the appellant had become really insolvent, or was out of the country, no security was ordered; but now the question of security of costs is entirely in the jurisdiction of the Court. Such security must be given in a reasonable time, and if only the day before the hearing, the costs of the day may have to be paid.

An application for security for costs will generally be too late if made when the appeal is on the paper for hearing. In re *Indian, Kingston and Landhurst Gold Mining Co.*, 31 W. R. 34, was an exception to this rule, for there the delay arose from the Court not sitting. See also the report of the case, 22 Ch. D. 83.

Irregular
appeal.

An application for leave to appeal in an irregular manner must be made to the Court of Appeal and not to the Court below: Selwyn, L.J., *Allen v. Jarvis*, L. R. 4 Ch. 618.

Aban-
doned
appeal.

The costs of an application for the costs of an abandoned appeal will not be allowed unless a previous demand has been made: *Griffin v. Allen*, 1879 W. N. 117.

By liqui-
dation.

As to applications for leave to appeal, for the prin-

ciples upon which those by official liquidators are dealt with, see *In re Selon Valley Mines*, 21 Ch. D. 388.

The cause of the majority of the differences of opinion which arise between the Court of Appeal and the judges of first instance is because the point which is taken before the higher Court has not been taken in the Court below; and if the attention of the judge were called to it, there would not be the number of appeals there now are: Brett, L.J., in *Emden v. Carte*, 19 Ch. D. 323.

Why
Court of
Appeal
often over-
rules.

The Court of Appeal has no jurisdiction to alter an order of the Court of Appeal, even if the Court consisted of the same three judges, after the order has been actually drawn up: Jessel, M.R., *Earl de la Warr v. Miles*, L. R. 19 Ch. D. 82.

Court of
Appeal
cannot
alter judg-
ment of
Court of
Appeal.

When an action has been dismissed an application to stay any proceedings within the order as for costs should be made to the Court below, and not to the Court of Appeal: *Otto v. Linford*, 18 Ch. D. 394.

Otto v.
Linford.

Whether a party to a special case who does not appear at the hearing before the Divisional Court can appeal from the judgment, quære: *Allum v. Dickenson*, 9 Q. B. D. 632.

Appeal by
party not
appearing
at hearing.

When a party intends to change his solicitors upon an appeal, and the notice of appeal is signed by the new solicitors before the order to change is obtained, the notice is good: *Kettlewell v. Watson*, W. N. 1883, 102; 31 W. R. 709.

Appeal
signed by
new soli-
citors.

**Criminal
matters.**

There is no appeal in a criminal matter. As to what is a criminal matter, *Reg. v. Foote*, 10 Q. B. D. 378.

**House of
Lords.**

When the House of Lords reverses the Court of Appeal, the order is made an order of the Court of Chancery by application to the Court of first instance: *British Dynamite Company v. Krebs*, 11 Ch. D. 448.

REFORMS STILL NEEDED.

It is now proposed to offer some few suggestions as to the alterations in procedure which might still be made, for the common advantage, if possible, of the litigant, the lawyer, and society at large.

And first it may be premised that although any change that may be made should beneficially affect all these three classes, yet still that the lawyer is the person who should be the least considered of the three. He has no vested interest in his profession, so as to have any claim to earn not less than a certain sum out of it, and in fact exists only for the advantage of his client; and therefore no change should be refused because it damages his position or his chances of making money in the profession which he has voluntarily adopted.

Nor should the case of the litigant be preferred to that of society at large, as the number of persons desirous of going to law is always happily less than that of those who manage to avoid this ordeal. If however a man is compelled by circumstances to seek the assistance of the Courts of Justice in this country, it is a crying shame that he should not be able to get his case adjudicated upon quickly, cheaply, and effectually. And if a plaintiff is bringing a vexatious action, it is hard that the defendant should not be able to get it brought to an end with as little trouble and damage to himself as possible.

In order to ascertain the best way to effectuate these ends, the first thing to be considered would seem to be the

state of mind of the plaintiff and the object for which he is bringing his action ; and upon this a judicial decision at as early a stage of the proceedings as possible must certainly be desirable.

As the mere issue of a writ was found, in 1879, to effect a settlement in more than twenty-five per cent. of the actions instituted during that year, it must be conceded that this is a very good way of commencing proceedings, and that as long as the expenses of a writ are kept as low or if possible made lower than they are at present, no radical change is desirable here ; and that certainly it would not be wise to incur the additional cost of a compulsory plaint to be delivered along with the writ, as this would be merely penalising the defendant unnecessarily.

The next step after appearance, namely, one which takes place in three out of every four cases, is the one which presents the greatest difficulties, as the simplest class of case has been already eliminated.

I think that of all the plans proposed the one that offers the greatest advantage is the bringing the parties face to face immediately after appearance before some impartial person in authority, such as a master, or if it were possible a judge in chambers, whose authority would have all due weight with the parties. Irrespective of its being the natural thing that two honest men who have a subject in dispute would desire to do, viz., to see each other face to face, it would be the best means of forcing a settlement upon one honest man and a rogue, or even upon two rogues. A plaintiff before action and often until trial has no means of learning what his adversary has to say to his claim, or in other words, what his story is ; and the sooner he learns it the better. He generally talks his own case over with his legal adviser and with his friends, until he comes to the conclusion that he is an ill-used man, and that nothing can be said on the other side.

If he were brought before a judge and compelled to state his case shortly, and his opponent had to reply, an issue

would be raised at once. This scheme is not advanced as an original idea, but rather as one that has been tried before in other countries with success, and suggested though never adopted in our own. Another advantage of this method would be that if a plaintiff had got into the hands of the typical fighting attorney, the advice of that gentleman would not have that undivided authority with him that it would have, if a judicial construction had not been put upon the facts of his case, as it would be in the way proposed. Again, this kind of lawyer would hesitate before he urged his client in the face of judicial advice to prosecute his claim upon the original lines for two reasons—the one because he would be afraid of judicial censure in that particular case after having been warned, as well as of loss of reputation in the future; and the other because he would fear to lose his client when discovered to be wrong in advising him to act against the advice of the judge or master.

It is thought therefore that this arrangement would be productive of good effect in settling many actions in a rough-and-ready way, and preventing a litigant from pledging himself to hostility when there might be no necessity for it. Further, it is hoped that this scheme would effect at least as great a proportion of compromises as the issue of the writ itself; and it is proposed that in every action the *first* proceeding after appearance shall be the enforced attendance of both plaintiff and defendant before a judge or master in chambers, attended or not by solicitor and counsel, when such judge or master shall have a discretionary power to examine either of them on oath, and to give any directions as to the future conduct of the action that may appear to him to be desirable. This would be, in fact, the summons for directions, with the enforced personal attendance of the parties, at the very beginning of the action.

The idea that it is the inalienable right of a Briton to bring and to have tried out any action in any way he pleases

is a license that should be curtailed in more stringent ways than by the mere visitation of costs. How can a man against whom an action has been improperly brought be adequately recompensed for the trouble and anxiety he has been put to in defending it under the present system, even if his taxed costs are ever paid him; and if they are not, his case is still more deserving of pity. And, therefore, the duration of an action improperly brought should be as short as possible, and the action itself should be under judicial control at its earliest possible stage.

And then why the losing side should have any necessary right of appeal, except from a master or a judge in chambers to a judge or judges in open court, it is hard to see. Leave should be a condition precedent, or else the richer adversary has a pull over the poorer: e.g., *Smitherson v. S. E. Railway*, H. L., *Times*, July 16, 1883. The sooner a matter is settled the better, and of two evils, it is wiser that a dispute should be promptly settled, not quite accurately, than be kept unsettled for a very long time, and ultimately decided aright when, perhaps, too late.

For analogous reasons, the fewer issues that are raised between the parties the better. Not only is the expense of bringing evidence upon the various unnecessary issues raised, saved; but any one of them, if appealed, prevents the final settlement of the matter in dispute. Courts do not exist in the way hospitals are sometimes supposed to do, as fora where law students and young practitioners can learn the law—this they must pick up how they can, and certainly not at the expense of suitors—and, therefore, learned expositions of neat difficulties, and much less the starting of unnecessary, and often imaginary, points should not be made to the detriment of suitors. Even under the Judicature Acts, a plaintiff who has no real cause of action, as the result, when it comes, shows, often relies on interlocutory applications which are purely side issues raised adroitly by his legal advisers, and have no logical connection with his substantial case against the defendant.

In every instance in which an interlocutory application is made, the loser should be prevented from going on with his action until he has paid the costs of it, and they should not, as they so often are now, be made costs in the cause. Appeals in interlocutory applications should be very much discouraged, for they draw the parties in the action away from the main matter in dispute between them, and lengthen the duration of the quarrel. It is, therefore, suggested that no interlocutory application, other than by summons to the master or judge to whom such action is, as it should be, attached, should be possible except by leave ; and that the loser of it should pay the costs before he can take the next step in the action.

The next point to which it is desired to draw attention is the prevalent idea that trial by jury is a privilege which should not be taken away from any litigant who desires to enjoy it. Supposing it is the privilege for him, which it is supposed to be, a thing I do not think myself, it certainly is not for the jury, as the Belt case or the Phoenix Park murder cases testify. Even if it is undesirable to take away the right in criminal and quasi-criminal cases, in ordinary civil actions it is a hardship on the jury panel, for which they get no adequate return.

Again, the persons who are put on the panel are those who can least afford to pay the penalty ; and the least thing that could be done, in common fairness, would be to make the litigant who desires to have a jury pay for it, just as he has to pay for any other luxury.

Another hardship litigants are now able to inflict upon society at large, for which it gets no adequate return, is that of calling a witness for their own benefit, in cases where the witness is not interested, upon a day which may not suit him, and then inadequately paying him for attending, when his attendance is really not absolutely necessary for gaining the action. This is especially the case with country witnesses, and besides the suggestions which follow as to the cause lists which will, in part,

mitigate the hardship, it is thought that more evidence should be taken by affidavit ; i.e., that in a witness action evidence not of the first importance should be taken on affidavit when the notice to admit specific facts will not relieve, and when this is impracticable, and a witness states, on oath, that it will be a great loss to him to come to London about the day of trial, that he should be examined, and, if necessary, cross-examined, before the County Court judge of his district. I have been fortified in many of the hints here sketched out by a very able article upon the Procedure in the High Court of Justice which appeared in the "Nineteenth Century Review" of January in the present year, and I would seriously urge that the difficulty of changing any established form in our present procedure is often in the inverse ratio to the advantages of it. In one of the Chancery Courts, only very lately, adjourned summonses from the chief clerk in 1881 were not then heard by the judge in Court. Opposed petitions are placed in the paper a dozen times, or more, before they are reached, at a cost of say £6 to the ultimate loser from which no one, except the solicitor of the winning side, gains any advantage whatever, and which he would gladly forego to avoid the chance of the case coming on.

Arrangements are, as a rule, made for the benefit of those who have the most work in a particular Court, and not, as it should be, for comparative strangers there. It is thought, therefore, that no allowance should be made for the day upon which a case appears in the paper, or term-fee allowed, while the penalties for non-attendance, when the case does come on, should be as hereinafter suggested.

It is now proposed to glance at some few of the objections to the new system, as originally proposed, which have been hitherto entertained by the Law Society. Of course much of the successful working of any new system depends upon the masters and chief clerks ; who, if they permit the multitude of adjournments that used to receive the sanction of the old masters in Chancery, would them-

selves make anything in the nature of a summons for directions, or whatever the first application to them is called, a source of delay and expense to suitors, and not the final settlement for peace or war that it is capable of being made, and indeed intended to be.

The remarks of the Law Society upon the impracticability of the summons for directions were directed against two phases of it, (1) that of its being settled upon one application, (2) that of its being frequently adjourned. But why should either extreme be taken?—in medio tutissimus ibis—and then the solicitor will have to know what he means to do generally, but not in every little detail when it is first heard; and the task thrown upon the master, who is presumably a gentleman of ability to begin with, besides having had considerable experience as well, will not be so herculean after all.

If there were an appeal to the judge, the costs might be, say, £7, and if the loser were made to pay this at once, and not to be allowed to take another step in the action until he had done so, surely they would not exceed or anything like equal those under the pleadings' system, as assumed in their report. And so it is suggested that the Law Society's objection on this point is untenable.

The case of the frequency of adjournments in County Courts, commented upon in the same report, is no line to the new system in the High Court, for it is well known that suits in these Courts have not too much care devoted to their preparation; and on account of the different sets of rules made at different times, treating of all sorts of subjects in different ways, which govern them, it is an acknowledged difficulty to carry on business there; while in the superior Courts the procedure under the new system will be simplicity itself. When one party relies on some particular County Court rule, and the other cites the section in the Act (19 & 20 Vict. c. 108, s. 57) giving judges power to allow any amendment, and the judge will not do so but upon terms, what can result but confusion

and—adjournment? For these reasons, it is thought that no deduction can be drawn from County Court practice; and perhaps a little more actual personal knowledge of its working on the part of eminent members of the committee would have prevented their using a misleading illustration.

The Law Society further says, that the first application under a system in which pleadings are abolished would be not to a master for directions, but to a judge to allow pleadings. It then urges reasons to show how expensive this application would be—possible affidavits and the employment of counsel—but surely the judge, that such an application came before, in applying the rule—“no pleadings shall be allowed,” would ask, “What is wanting to enable you to go to trial that you may not get upon a summons for directions; you can there make an application for further particulars of writ, of defence or reply, for stating a case, or as to venue, discovery, exhibition of interrogatories, examination of witnesses, trial, or any other matter or proceeding in your action before trial?” It suffices to say that the lawyer, having run through the gamut of these, and having shown that his case came under no one of them, would have earned his fees and done good work therefor, for then, and not till then would he obtain his request; and it may be added that after such a feat, few would say but that he would have justly earned it.

Moreover, the same report says, if pleadings were abolished, and a notice of special defence adopted, that this would be tantamount to a pleading. This they allege as a hostile criticism, but most persons will regard it as a great advantage, believing, as they must, that the good of pleadings might be preserved in this way in actions where it is really necessary, and at the same time all that is unnecessary and productive of cost and delay done away with. When such things as fraud, the statute of limitations, payment, or, as the County Court Acts say, set-off, infancy, coverture, &c., can be sprung unawares on a

plaintiff, it is very fit and right that he should have notice thereof; and it is thought that by strictly limiting special defences to where they are of service, a measure would be introduced that must be in every way advantageous.

The observation which follows in the Report of the Law Society's Committee about the old technical pleading can scarcely be correct; for these special defences have little resemblance to the "special pleas" that are found in Chitty on Pleading, and similar books, as a reference to them will easily show. This remark must have slipped in *per incuriam*, and nothing further need be said about it.

With all submission it is, however, suggested that any notice of reply the plaintiff is to give in return for the notice of special defence, does not seem to have that simplicity about it that the rest of the scheme of the new Rules, as originally propounded, had so conspicuously. For, except in the case of counterclaim, where the defendant is virtually turned into plaintiff, where is the necessity of notice of any special matter, by way of reply, from the plaintiff at all? Could not a system be devised in which no alternate pleading had part? Mr. Justice Kay has, in a letter to the Law Journal newspaper, shown that the reply is unnecessary to a system of pleading. In equity there was nothing after the answer. Why then keep up the reply when we are about to cut down pleadings to the narrowest limits? Alternate pleading may have been necessary when it was by speech, and *affirmo, nego, dico* and *probo*, &c., assisted the settlement of the issues, but surely this system was never worthy to be crystallised in writing. When the plaintiff gets notice of special defence, if he thinks he can traverse it, or get over it by way of confession and avoidance, both of these courses are open to him at the trial without his having to write and deliver a reply; and the point being narrow and one that originated from the defendant, it will be no hardship for him to be able to controvert what is against him. In fact, he will stand on a certainly no worse footing than the plaintiff in the case

of the indorsed writ of summons. Moreover, to each party the summons for directions is still equally available, to afford and supplement, under the wise control of the master, any information really required in the future conduct of the action. For these reasons, it is urged that the reply is a heterogeneous element in an otherwise harmonious whole, and that its removal would make the new formula in judicial progression of universal application.

With regard to the actual statement of the Law Society's case, pleadings are essential to define real points at issue, it must first be remembered who composed the Lord Chancellor's committee, and that as they said the reverse, on the point of mere authority, this is not the better opinion; and secondly, that these resolutions only refer to actions in the Queen's Bench Division and not to Chancery suits, where the complications that arise require Statements of Claim and Defence, and where evidence plays a less important rôle than at common law, and that at all events it will be a very easy matter to return to the pleadings' system, if the working of the new régime is proved to be unsatisfactory. The question is whether, having been proposed by so great an authority, it does not deserve a trial. There was great hostility to the Common Law Procedure Act and to the Judicature Acts when they appeared; but there is no intelligent and honest person who has worked under them but will now confess that they have been on the whole most beneficent reforms, indeed there is an implied compliment to the latter in the remainder of the Law Society's resolution: "that the system of pleadings presented by the Judicature Acts and Rules should be substantially adhered to."

With regard to appeals from Chambers, it would be a most ungracious task to have to ask a judge to allow his order to be appealed against, while the very object of an appeal is to gain the careful decision of a higher authority; and so to make business conducted in Chambers, where everything is in a hurry, obtain, when necessary, the con-

trolling influence of supervision. If leave is asked and refused, it may be stopped. The very fact of there being no stay of proceedings unless granted, operates to prevent any evil that would arise from the abuse of appeals. Apparently, a good plan would be to limit appeals and not to allow more than two in any case, and to have the last from the judge in Chambers to the Court of Appeal direct.

The necessity for a new summons upon each appeal is by no means apparent; indeed, it has been suggested that before any summons is issued, an application to agree to the requirements therein to be contained should be made in each case to the other side, and then, upon proof of refusal, if the summons is ultimately granted, that the costs should be at once paid by the other side.

The matter of cause lists is so peculiarly in the hands of the Courts, that the great evil that arises from the parties not being ready when their cases are called on is more to be cured by the way in which the parties themselves are compelled to proceed when their case is called on than by any fresh specific regulation. If a plaintiff is not ready, to strike his case out of the list with costs, and not to allow agreements to postpone between the parties, but to strike the case out of the list at once, and to give them the trouble of having to reinstate it in a new list if they want it tried, would seem a feasible method to adopt. To discourage parties that intend to compromise from allowing their cases to come in the list by having a heavy fee to pay if they do not go on, and on no account to adjourn cases to suit the convenience of counsel, appears not to be impracticable. It is certainly not fair that because the plaintiff's counsel is not ready the case should be put as it is now at the bottom of the list. This is punishing the defendant for the plaintiff's fault. Whenever a case is struck out on the application of either party, the side not appearing should have to pay the costs of the day at once.

It may be suggested, perhaps, that there shall be two cause lists, one of town cases and one of country cases, and that a first edition of the trial paper shall come out on the Monday for the Wednesday, and a second at four o'clock on the Tuesday, and so on, and that it shall be put up in Lincoln's Inn and the Temple, at the Courts, in the City, and at the West End. That country cases in the paper on a particular day be always taken first. That the causes shall be assigned in the trial paper, as now, to particular judges, but that fewer shall be put in the paper than now, and that any cause in the paper of any judge on a particular day shall be liable to be transferred to any other judge when he shall have finished his paper. That no action shall be settled after appearing in the trial paper without having been at least duly opened, except upon payment of, say, £10, by way of Court fees. That when any action is called on, if after five minutes delay the plaintiff is not ready to open his case, a verdict for the defendant be taken; and if the defendant is not ready, the plaintiff have a verdict, as of course. That this rule be rigorously adhered to, and no variation from it permitted under any circumstances. That there be a register kept, upon which the names of all parties who have lost an action be placed, and that no name be removed from such list, except upon production of a receipt from the other side for the amount of the verdict and costs. That the fact of being in such list be in itself a stay of proceedings in all other actions in which such party is plaintiff.

The proposals of the Law Society with reference to shorthand writers' notes, to Order 14, applying to ejectment, to the revival of the Bills of Exchange Act, and to the shortening of the Long Vacation, being matters upon which their opinion must be considered entitled to the greatest consideration, it would perhaps be indecorous here to offer any suggestion upon them; and the other important matters in their report have been for the most part dealt with by the new Rules.

It only remains to say that their recommendation as to casting the onus of proof of want of means on the judgment debtor, certainly in cases where the judgment debt is in respect of goods sold to the debtor, to be dealt with in the way of his trade, is an admirable one, and carries conviction with it. A precedent for exceptional legislation is furnished by sect. 1 of the County Courts Act, 1867, which by-the-bye might advantageously be improved by reducing the sixteen days, and providing a means of summarily disposing of the notices of defence, which in a very great majority of cases are given simply to delay judgment. For some remarks upon enforcing judgment, which it is now too often impossible to do effectually, see the chapter intituled "Enforcing Judgment," p. 273 et seq.

Again, it seems hard to see why a judge should not sit at Guildhall and the Royal Courts continuously throughout the legal year to try actions without a jury. Actions might then be commenced, tried and disposed of within a very short time.

City solicitors would be greatly inconvenienced if a notice containing the causes in the paper for the next day were posted up at some place in the City, say at the Guildhall, as well as at the Courts and the Associates' Office. This should not be a difficult or expensive matter in these days of telephones, &c.

With regard to official referees, it need only be said that they are still expensive luxuries, and therefore beyond the purses of ordinary persons. I feel sure that the abolition of referees would decrease costs considerably, though it is hard to see why the propositions of the Law Society with regard to them should not work if the expense of them were decreased. Many would prefer to see a staff of accountants attached to the High Court, and paid for the work they actually do, and not by salary, who should prepare and verify statements of account when required.

After these suggestions as to the reforms in our procedure, which, if not absolutely essential at the moment, are at least much to be desired directly we have mastered the effect of the new Rules, and can "start fair" again in our race towards the goal of perfection, the idea not unnaturally presents itself whether in making all these alterations in procedure and leaving the substantive law untouched, we are not dealing with results and not causes, and straining out the gnat while swallowing the camel. The trite maxim which, if quoted by a modern Sancho Panza, would not often be *mal apropos*, "two blacks do not make a white," affords the real answer to the objection suggested above. Because the substantive law wants alteration, that is no reason why our procedure system should not be made as perfect as possible. One thing only will then remain to be reformed instead of two. In a treatise such as this, any suggestions, however useful as to proposed changes in the law itself, could not fail to be considered out of place. There are however certain alterations on the border line which may, perhaps not inappropriately, be indicated here. Such things as the right to use our present system with impunity as a means of torturing others will readily occur to the mind of the reader. Our jury system works hardly upon those individuals who are subject to it, and do not court it. The litigants' power to subpoena witnesses and to cross-examine them, even though the latter right will it seems be controlled in a strong Court (see *Raymond v. Tapson*, 22 Ch. D. 430), should be put under more wholesome restraints than at present. While lawyers are no longer able to feather their nests at the expense of infants' estates, and to indulge in unnecessary administration actions, and while damages can be obtained if criminal proceedings, a debtor's summons, or even a winding-up petition is wrongfully instituted, we have the expressed opinions of the present Master of the Rolls and the Lord Justice Bowen, two of the greatest living lawyers, that there is no remedy other than party and party costs

for the defendant against whom an action, however absurd, is brought by a vindictive adversary. There is no solatium by way of damages for his wounded feelings, for the days he has kicked his heels about the Royal Courts of Justice, other than the ordinary expenses of a witness—for the hours he has unwillingly been dragged away from his business and his home.

And not only has he no remedy in these respects, but he must pay the difference between party and party costs and solicitor and client costs to his own solicitor. The words used in the late case of *Quartz Hill Consolidated Gold Mining Company v. Eyre*, 31 W. R. 668, by the Master of the Rolls, explain the principle of this. The theory of extra costs (i.e., any over and above those allowed on a party and party taxation) is that they are not necessary for the purposes of the party who incurred them, and Bramwell, B., says in *Harold v. Smith*, 5 H. & N. 385, "Party and party costs are given as an indemnity, not as a punishment to the payer or a bonus to the payee." This surely is not as it should be, and at least these changes, and others of a similar character, should be made so as to protect the public, not only from the sometimes mythical legal myrmidon the attorney-at-law, who is now a thing of the past, but also from the law itself and the assaults of vindictive adversaries. The law should be as efficient a weapon of defence as of offence. Till it is rendered so in our favoured country, we must not be content with new Rules or strong cases in which unscrupulous solicitors are punished for sheltering uncertificated persons when practising on their own account or for not paying counsel's fees. This is indeed straining out the gnat and swallowing a very large camel indeed.

In a word, we do not want only regulations as to the method of use and the costs of our legal machine, but as to the objects for which it must be used as well.

The difficulties that a litigant has had to contend with hitherto, and the enormous expenses of any action are so

apparent, that I have attempted to point them out fearlessly, running the risk of appearing to lack modesty rather than the courage of my opinions. In pursuance of the same feeling, though at the same time with great diffidence, and rather with a view of eliciting useful criticism, than in the hope of having found proper and appropriate remedies, observations have been offered as to the difficulties which it is feared will still exist and some ways of lessening them. If any one of such suggestions proves of practical use, the object of this chapter will have been more than attained.

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THE
RULES OF THE SUPREME COURT,
1883.

WITH AN
INTRODUCTION, REFERENCES, NOTES AND INDEX.

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RULES OF THE SUPREME COURT,
1883.

WITH
INTRODUCTION, REFERENCES, NOTES AND INDEX,

BY
A. R. WHITEWAY, M.A.,
OF THE EQUITY BAR, AUTHOR OF "HINTS ON PRACTICE" AND "HINTS TO SOLICITORS."

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INTRODUCTION TO THE RULES OF THE SUPREME COURT, 1883.

It is impossible to do more than offer some few general observations as to the scope and drift of the *new* Rules in this Code, owing to the short time that there has been between its publication and the date at which these pages go to press. To write any comments of an exhaustive character, or really meriting the title of an introduction, is impracticable until they have been mastered in detail. Any attempt of so pretentious a character would be fraught with unfortunate results to the writer and reader alike; and therefore all that it is hoped for these few pages of introductory matter to do, is to indicate to the reader the writer's views of the way in which a study of the Rules should be begun, and their general scheme approached. A cursory perusal of them, which is all that has as yet been possible, is quite insufficient to do more; and nothing but time will enable the most careful student of them to digest and grasp their real meaning and intent. Elucidations of this another edition, if required, will attempt to furnish, supplemented and strengthened by notes of all the reported cases decided by the Courts which seem to illustrate their manifold bearings. Remarks as to their probable construction by the judges would be unpractical, and as partaking too much of speculation, hardly even of temporary value.

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Since, however, this new code comes upon us as in effect a new system of procedure, after the Common Law Procedure Act had had more than twenty-two years and the Judicature Acts eight years of trial ; and also as being the handiwork of the most eminent practical lawyers of the day, who have certainly not hurried over their task, it surely needs some preface, if only with a view of showing that the advent of the new Rules is welcomed, and the reasons for their coming into force appreciated.

They do not differ from the systems of procedure just alluded to in the evident marks they bear of intending to keep the middle path between too great stiffness in refusing and too much easiness in admitting variations from the system immediately preceding them.

The changes they have introduced will certainly never be thought to be greater than the evils they were intended to remedy ; and no one will consider that the Rules and Orders under the Judicature Acts, which were in their nature alterable and even tentative, as having supplanted so good a system as that of the Common Law Procedure Act, ought not to have been varied directly it seemed expedient to those in authority that changes and alterations, however radical, should be made in them. Nor will anyone, who has carefully noticed the multitude of decisions and additions that there have been to the Rules and Orders just referred to wonder, that an attempt to codify our Rules of Procedure should have been made at this time. Indeed, the only wonder was that it was not made before ; and it is probably because it has been so long promised that there has been no general outcry for a change, at all events on the Common Law side, heretofore. Moderation has certainly been used with regard to them, and alterations of a speculative character are hardly to be detected in the new régime. The first thing, perhaps, which strikes the reader is their thoroughness, and the immense amount of consideration they unmistakeably manifest. The second, that although the

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changes they introduce are great, and the reforms they point out thorough, and the means they take to enforce them drastic, they aim at no alteration of the substantive law, but only at the means whereby it is to be enforced. They relate rather to the rubric and the service of the law, if such an expression may be permitted in this place.

Perhaps it may be desirable to consider first, whether any preliminaries with reference to them throw light upon the new Rules as a whole. And it is thought that the intention of those who settled them, as well as the objects which they are meant to serve, may be learnt from the report of the Lord Chancellor's Committee of Legal Procedure and that of the Incorporated Law Society upon the various resolutions of the former Committee. These reports were given at length in the Appendix to the first edition of "Hints on Practice," but it is thought unnecessary to reprint them here as they merely foreshadowed the Rules themselves, which are printed at full length.

Some observations which have reference to the two reports, however, have not been entirely excluded from the second edition, and they will be found at the end of that edition in the chapter upon the reforms still needed; for among them there are suggestions which it is believed are of permanent value; and as they, moreover, tend to remind the reader of the important part the Incorporated Law Society have had in the formation of the new scheme.

The intention of the framers is to be gathered in part from the preamble of the report of the Law Society's Committee to the effect that their desire is to see all unnecessary proceedings abolished, and the points at issue between litigants defined and decided in the speediest manner possible. This is most satisfactory as coming from the representatives of the body of men best able to facilitate the progress of actions and to curtail their expense; while the objects of the Procedure Committee were, as can be gathered from their report, to expedite the proceedings in an action and generally to reduce the costs

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of litigation. In fact, the object of the changes introduced by them is to get a competent judicial decree in the shortest time and at the cheapest price. Delays have been unpopular for some time past. For example, in *Lydall v. Martinson*, 5 Ch. D. 780, the party desiring a case to stand over had to pay the actual costs of the day. This was a decision of Fry, J., in June, 1877, and in 1879, in *Evelyn v. Evelyn*, 13 Ch. D. 138, V.-C. Malins allowed the costs of a motion to dismiss for want of prosecution, upon the ground that a plaintiff who receives such a notice should at once submit to speed the cause and tender the costs of the notice.

In the case of *Hales v. Morris*, before Kay, J., reported in the "Times" of December 23rd, 1882, that learned judge held, that in cases of delay a motion can be made under Consolidated Order 35, r. 23, upon a certificate by the chief clerk stating whose fault such delay has been. Again, in *Guest v. Caldicott*, 30 W. R. 122, an order was made dismissing the action by reason of wilful delay. The claim in that action was for penalties for alleged bribery under 17 & 18 Vict. c. 102, s. 14.

These cases show that during the last few years the judges have set their faces against unnecessary delays, and that those who resort to them are generally punished by having to pay the costs caused by their want of zeal; while no excuse such as that of inadvertence will assist, for Bacon, C.J., said, In re *Dickenson*, Ex parte *Dickenson*, 20 Ch. D. 317, "It has been submitted that this was an inadvertence on the part of the solicitor, but I cannot hear of such an excuse from a professional man." When the alterations made by O. 54 are considered in connection with these cases, it is plain that these objects have been now effectually carried out.

Again, unnecessary expense has been repressed by the action of the judge in cases like *Hirst v. Proctor*, W. N. 1882, 12, where unnecessary affidavits setting out the contents of written documents had been filed, and *Crack-*

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nall v. Janson, 11 Ch. D. 14, where the affidavits were of unusual prolixity. The latter was an order of Fry, J., who has always, as for example in *Walker v. Poole*, 21 Ch. D. 835, condescended to go into the particulars and details of unnecessary expense. Expressions of opinion have frequently been heard of late to fall from the learned judges to the effect that the attendance of counsel merely to ask for costs is to be discouraged; and the regulations of the taxing masters as to the employment of two counsel are stricter than they used to be. The new regulations, therefore, as to a compulsory saving of expense have been foreshadowed to a certain extent by the practice for some time past, and the way in which they will act is not sprung upon us altogether unexpectedly. See, for example, O. 65.

As to the means which have been taken to carry out these objects, the lessons learnt by the comparative failure of the working of the Judicature Acts, Rules, and Orders on the Common Law side, have been productive of many precautions. The officials in many departments have been consulted, and the suggestions made by them carefully considered by the Procedure Committee themselves. Much that has to do with the conduct of an action is really known only to them and to the solicitors of the parties, and, therefore, their opinion upon many details is worthy of the most careful consideration. We may hope for these reasons that, as the practical effect of the various provisions contained in the new Rules has been so well considered, there will not be the same need for proving them that there was in the case of the Rules and Orders in 1875, and that they will work at once and do what they were intended to do, namely, reduce the expense and hasten the result of actions in the High Court. An important question with reference to the saving of expense in actions was whether discovery and interlocutory applications generally should be practically left alone, although being too easily abused, and an action allowed to adopt a well recognised form and go through

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its ordinary routine, or whether it was possible to curtail the interlocutory proceedings, so as to allow applications only which really shortened or tended to shorten the course of an action. It has been considered wise to exalt a master into the presiding genius over each action; and the results of the new Rules have really been the codification of a mass of orders and regulations which were before difficult to refer to (as being comprised in thirty-one sets of Rules), with many necessary additions, and a still further assimilation of the practice in the two great divisions of the High Court of Justice. They will no doubt take time to digest, as did the Judicature Acts, Orders and Rules, and all that this part of the introduction proposes to deal with is the object with which they have been brought out.

It is, then, with the object of saving expense and delay in the trial of an action that these Rules have been drafted under the supervision of those who have watched most closely the working of the Judicature Acts during the past seven years. It may be assumed from the report of the Legal Procedure Committee that the first desire of their framers was to bring the parties in an action to a settlement if possible by the issue of the writ, and for that purpose to cause the writ to be as self-explanatory as possible (see, however, O. 3, r. 2) and as little expensive as practicable, and failing this to make them see respectively what could be said by the other side before making up their minds to go to the expense of a trial. It is for this purpose that there has been so little change in this respect as to the writ. See also O. 20, r. 1a.

At the same time we see the results of the judicial expression of opinion so often given that applications for discovery had been pushed to too great lengths, the effect of which had been to increase the expense of an action uselessly; and also that interlocutory applications generally had been too numerous and not productive of the settlement of actions, which is the chief reason for which

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they should be tolerated. This difficulty is bridged over by making leave necessary before discovery can be had.

But there is another and perhaps a still more striking change in general practice which has been introduced by the new Rules. It is more striking because it applies to every motion, and also because the power conferred by O. 65 is capable, in the hands of a strong judge, of entirely depriving the party to blame of costs. I allude to the very wide powers conferred on the judge of dealing with costs as between solicitor and client, and also to cases where unnecessary costs have been incurred, as, for example, by wasting a small property by an administration action.

This must be regarded as a wise provision ; and, moreover, notice of the coming change has been duly given in the matter of unnecessary or too lengthy affidavits, and too great expenses generally, by cases like *Hirst v. Proctor* and *Walker v. Poole*, which have been before quoted. Furthermore, Mr. Justice Kay, in his usual outspoken way, gave the profession timely notice, in explicit terms, in the case of *Wood v. Ainley*, alluded to in the Solicitors' Journal of June 30, 1883, at p. 581, of the changes that have since been made by O. 55, rr. 3—12. He said then that the case before him was an action brought, not to administer residuary estate, but simply as to a specific gift, to decide a question which might and ought to have been raised at the hearing by demurrer, which was not then abolished, as it is now by the new Rules. The learned judge went on to point out that as the action was brought by a next friend on behalf of infants, he had full power to deal with the matter of costs. The result was that he would not allow as against the estate of the infants any more costs than would have been incurred if the action had been tried on demurrer, and the next friend had to pay personally the extra costs. His Lordship said that it ought to be widely known that people who chose to bring actions on behalf of infant plaintiffs do so at their

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own risk, if such actions are unnecessary or improper. And he further said that the new Rules would probably give additional powers to the judge to deal with cases where unnecessary costs had been incurred; as has now in fact been done by O. 55 and 65. And as to the feeling of the Courts against unnecessary administration and costs, see Pearson, J's., remarks In re *Harman and Uxbridge and Rickmansworth Railway Company*, W. N. 1883, 124, and also the case of *Croggan v. Allen*, 22 Ch. D. 101. Cf. *Re Morden Morden v. Martin*, Kay, J., July 11, 1883. In the same number of the same excellent journal, at p. 584, the case of *Ex parte Arnal* is reported, in which the Court of Appeal refused a successful appellant his costs, because, although he was within his rights, the case was a trumpery one, and £20 was all that he deserved. The reason the Court assigned for not allowing him his costs, though it gave him the £20, was to mark "its disapprobation of such appeals." This surely was a fair intimation of the restrictions as to the allowance of costs which we find in the pages which follow, and as to the wisdom of which no disinterested person can have any doubt.

It now only remains to mention in detail a few of the chief alterations in practice actually made by the new Rules, and it may be well to premise them by stating that the day upon which they come into operation is October 24, or the first day of the next legal year.

Time does not run during the long vacation in computing the dates at which pleadings, &c., are due (O. 64, r. 4) and action begun under the old régime will suddenly find itself subject to the operation of the new procedure, which practically takes effect immediately at the end of the current legal year, namely, step not taken before the vacation judge after August 8th next. The preface to the new Rules is the same as that affixed by the late Master of the High Court to the Judicature Act: "Where no other provision is made by these Rules, the present procedure and practice

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remain in force :” *Fowler v. Barstow*, 20 Ch. D. 243 ; see J. A. 1875, s. 21. And where there is a conflict in practice between Common Law and Chancery, the most convenient rule is to be followed : North, J., in *Warder v. Saunders*, 10 Q. B. D. 117. See the Preamble to the Rules of the Supreme Court, 1883.

The first part of a current action that is materially affected is the pleadings, which are in future to be short and concise forms in the nature of abstracts. They are to contain particulars, with dates and items, of all matters, such as damages, expenses, &c., which a defendant would be likely to require details of. As demurrers are abolished, nothing will turn upon the form or style of any pleading (O. 20, r. 26), and as long as it bonâ fide contains an honest and full statement, not lengthy or embarrassing, of necessary matters, no exception can be taken to its style or form. There will be no necessity for the history of each case to be given ; and the best way of learning the new style is to read carefully the forms given in the Appendix to the Rules. This is of course a radical change from the style now in vogue, but not from the kind of pleading contemplated by the spirit of the Judicature Act. See “Hints,” p. 139. The object of the new kind of pleading is to narrow the issues between the parties, and in conjunction with the Admission of Facts, which will be alluded to hereafter, to prevent the necessity of calling witnesses to prove any but the material transactions between the plaintiff and defendant. Special pleading, therefore, may now be said to be a decided fault, and altogether out of place in the modern Statements of the Parties. The reply, however, is not done away with, and it will still be possible to utilise this form of pleading as heretofore.

Another beneficial change effected by the new rules is the notice to admit specified facts dealt with in O. 32. If either party serves his opponent with a notice in writing to admit certain facts for the purposes of the action and to save the expenses of the proof of them, and he refuses to do

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so in pursuance of it ; whether he ultimately succeeds or not, the costs of proving them will fall upon him unless the Court or judge otherwise directs. A form of notice is given in the Appendix, and it may be remarked upon it that the party served may qualify his admission in any way he thinks fit.

The result of this useful provision is that the expenses of formal proof will be in a great measure done away with, and witnesses need only be called to the matters seriously disputed by the parties. In this way the cost of the trial of an action will be materially lessened, especially if any particular fact is allowed to be proved by affidavit. See "Hints," p. 190 and p. 193.

O. 16, rr. 48—55, deals with the new Third Party Procedure, which it has materially simplified and improved. In future a third party cannot be brought into an action unless the defendant claims indemnity or contribution against him, and if he does not appear when cited, he will be taken to have admitted his liability ; and, moreover, if the defendant allows judgment to go by default, he can by leave of the judge immediately, or in any case after satisfying the judgment, enter judgment himself against the third party. There are other provisions of a somewhat similar character if the action is tried out and goes against the defendant. The third party, however, can appear and deny his liability ; and if he does so, it then becomes a question for the judge to decide whether he is liable or not ; and this he can do summarily.

A very striking alteration made by **O. 5, rr. 6—8**, and **O. 54, rr. 12—17**, is the assignment of every common law or a particular master, and in the Chancery Division particular judge not chosen by the parties. This is a great change, as it makes a master the wire-puller, so that in each action, and gives him powers which it is to realize the scope of until it is seen to what he does undertake in fact the direction of an action which will probably depend not only upon the

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particular master the action comes before, but also greatly upon the nature of the particular action itself. When the master will show his power most will be when the summons for directions (O. 30) is before him. This is an application which may be made by either party or by both parties, and which may include a request for particulars, statement of special case, discovery, mode of trial, venue, examination of witnesses, or indeed for any other proceeding in the action before trial.

This summons is to take the place of the numerous interlocutory applications that have been hitherto made in chambers, and no costs of any other application for anything that might have been included in it will be allowed the applicant upon taxation. From this regulation it would appear that the summons for directions is not intended to be taken out until the action has made some progress, and until the litigants' advisers have had the opportunity of making up their minds as to what they should include in it. It is to be hoped that too many adjournments of it will not be allowed, and that it will not be considered as of course to be a counsel summons. Another alteration in the interlocutory proceedings in an action which may be noticed here, is the power that is expressly given upon the summons for directions for the Court or judge even *mero motu* to make any order upon it that may seem to him to be just.

The next order (31) deals with Discovery, which cannot now be obtained without leave, except in actions for fraud or breach of trust. There is an express direction in the Rules, that upon an application for leave the Court or a judge shall consider any offer that may be made by the other side to deliver particulars, make admissions, or produce documents; and therefore a judicious and fair offer made by the other side may often stave off an application which just crosses the border line of desirability; and it is here that a little tact will often put an adversary in the wrong. The time for objecting to interrogatories is in-

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creased from four to seven days, while the costs of all improper ones is thrown on the party exhibiting them, who will have to deposit in Court £5 in every instance, and if the interrogatories exceed five folios, 10s. for each folio as well.

The costs of discovery will be allowed where and where only it appears to the Court or a judge to have been usefully obtained. The *ex post facto* knowledge obtained at the hearing will probably prevent the £5 coming out of Court in many instances.

O. 38 deals with the Mode of Trial, which if either party desires it will be by jury in actions for slander and libel, as to the evidence in which for mitigation of damages some useful provisions are made, as also in false imprisonment, malicious prosecution, seduction, and breach of promise; which latter cause of action unfortunately still survives, while assault is omitted from the list.

A trial without a jury may be ordered whenever the documents or accounts in the case require a prolonged examination, or where for scientific or local reasons it appears that a jury would be out of place. Except in these cases and in the Chancery Division, where the rule will still be trial without jury, either party can obtain by leave but as of right, an order for trial by jury. (R. 6.)

Furthermore, the applications at chambers in the Queen's Bench Division will, owing to O. 54, be of a different character to what they have been heretofore. Any number of applications may be included in one summons, and any order whatever may be made upon it; it may also be heard *ex parte* if the judge thinks fit, or the costs may be put upon any party not attending the hearing of it, or being in default. Moreover, by O. 58, either party may appeal to the judge by endorsement on the summons before the master or district registrar, or by mere notice to attend. In other respects the system of appeals seems to be practically unaltered.

How trials and motions are dealt with by O. 39 and

The most striking alteration made is that final judg-

THE NEW RULES.

ment may be given as to some of the parties and a new trial ordered as to others. Where the judge before whom the action was tried directed a verdict, the application is to be to the Court of Appeal, or otherwise to the Queen's Bench Division, and the judge who tried it must not be a member of the Court upon such application for a new trial. This will be by an eight days' notice of motion stating the grounds upon which it is made. As to the time within which it can be served, eight days is the limit for actions in London and Westminster, and seven days after the last day of circuit for those tried on assize; and in this computation of days vacations are not to be reckoned. Moreover, rules nisi are practically now abolished; and O. 53 and O. 57 codify the rules applicable to Mandamus and Interpleader.

Payment into Court is especially provided for by the new Rules in the following cases: (1) before or with defence, in satisfaction of the claim; (2) as black mail, but coupled with a denial of liability, which can be done in all cases, except in actions for libel or slander. The money paid in can be taken out by the plaintiff and the action discontinued, or if he refuses to accept the sum paid in it goes on much as at present. O. 22, rr. 1—21.

The only other subject upon which a few remarks will be made is that of Costs, with which O. 55 deals.

The effect of the new Rules is to place costs still more in the power of the judge than even at present, and to do away with the right of parties to their costs out of the estate, except in the case of a trustee or mortgagee.

While the higher and lower scale is continued as heretofore, though some of the allowances are altered, there is a special provision that the judge can direct all or any of the costs in an action, whether it has come to a hearing or not, to be taxed on the higher scale. In the absence of such direction the costs will be taxed on the lower scale. And in actions on contract, in which less than £50 is recovered, only County Court costs, together

INTRODUCTION TO THE NEW RULES.

with those of one counsel, will be allowed, unless the judge otherwise orders. The Courts also gain fresh powers to disallow costs as between solicitor and client that may have been improperly incurred or rendered useless by the default of the solicitor. See *Hints to Solicitors*, p. 184; and *In re Blyth and Fanshawe*, 31 W. R. 284; 10 Q. B. D. 212; and *In re Chapman*, 10 Q. B. D. 54 (C.A.), which show us that these powers are, at all events to a certain extent inherent in the Courts, and that they have acted upon them during the past few months. Among the other details enjoined by this order is the abolition of retainers as between party and party, while the number of conferences allowed is considerably reduced, and refreshers are made of fixed amounts. Provisions are also made as to the time for the delivery of briefs, and minor details, such as the fees of counsels' clerks and the vouching of fees, have not been overlooked.

O. 55, rr. 3 to 12, determines a course of procedure by summons in chambers making the general administration of an estate or trust unnecessary in many instances, when all that is absolutely required to be done is to define a question affecting the interests of a creditor legatee or cestui que trust, or when a direction to trustees or executors only is wanted. This provision has been already referred to in the earlier part of this chapter.

The Rules themselves must be consulted for the many lesser details which it is impossible to give even a passing notice of in the short space allotted to this Introduction.

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The references to pages are to Hints on Practice. The attention of the Reader will be drawn to important alterations in Practice by the use of italics in the body of the Rules, or by an asterisk prefixed to an important Rule which is entirely or almost entirely new.

RULES OF COURT.

The following Orders and Rules may be cited as “The Preamble. Rules of the Supreme Court, 1883;” they shall come into operation on the twenty-fourth day of October, 1883, and shall also apply, so far as may be practicable (unless otherwise expressly provided) to all proceedings taken on or after that day in all causes and matters then pending.

The Orders and Rules mentioned in Appendix O. hereto are hereby annulled, and the following Orders and Rules shall stand in lieu thereof.

See J. A., 1875, s. 17 and s. 21. As to pending business, see Morgan's Ch. Pr., ed. 3, p. 339.

ORDER I.

Order I.

FORM AND COMMENCEMENT OF ACTION.

1. All actions which, previously to the commencement of the Principal Act, were commenced by writ in the Superior Courts of Common Law at Westminster, or in the Court of Common Pleas at Lancaster, or in the Court of Pleas at Durham, and all suits which, previously to the commencement of the Principal Act, were commenced by bill or information in the High Court of Chancery, or by a cause in rem or in personam in the High Court of Admiralty, or by citation or otherwise in the Court of

RULES OF THE SUPREME COURT.

Order I. Probate, shall be instituted in the High Court of Justice by a proceeding to be called an action.

See J. A., O. 1, r. 1. J. A., 1873, s. 100. And as to what is a criminal matter, *Reg. v. Foote*, 10 Q. B. D. 378.

Other proceedings.

2. All other proceedings in and applications to the High Court may, subject to these Rules, be taken and made in the same manner as they would have been taken and made in any Court in which any proceeding or application of the like kind could have been taken or made if the Acts had not been passed.

J. A., O. 1, r. 3.

As to petitions, see *Re Gardener's Trusts*, 10 Ch. D. 29. See also *Warder v. Saunders*, 10 Q. B. D. 117.

Order II.

ORDER II

WRIT OF SUMMONS AND PROCEDURE, &c.

Indorsement on.

1. Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which shall specify the Division of the High Court to which it is intended that the action should be assigned.

J. A., O. 2, r. VI. See p. 81 and p. 82.

As to Chancery actions, see O. 5, r. 9.

See O. 5, rr. 2 and 3, where the writ is issued in a District Registry.

See p. 82 and p. 30 as to notice when required by statute.

No prolixity in.

2. Any costs occasioned by the use of any forms of writs, and of indorsements thereon, other or more prolix than the forms hereinafter prescribed, shall be borne by the party using the same, unless the Court shall otherwise direct.

See J. A., O. 2, r. 2. Cf. O. 19, r. 5.

For forms of writs and indorsements, see Appendix A.

The taxing master will take notice of undue length: *Baines v. Wormsley*, 47 L. J. Ch. 844.

As to the costs of prolixity in pleadings, see O. 19, r. 2.

Form of writ.

3. The writ of summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in Forms Nos. 1, 2, 3,

RULES OF THE SUPREME COURT.

and 4 of Appendix A., Part 1, with such variations as Order II. circumstances may require.

J. A., O. 2, r. 3.

4. No writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of the Court or a judge. Writ for service abroad.

See O. 11, r. 1, and J. A., O. 2, r. 4. Application for leave to issue, when made in Chambers, see p. 149. See, too, O 54, r. 12b.

5. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in Forms Nos. 5, 6, 7, and 8, Appendix A., Part 1, with such variations as circumstances may require. Such notice shall be in Forms Nos. 9 and 10 in the same Part, with such variations as circumstances may require. Form.

See O. 11, r. 1, and cf. J. A., O. 2, r. 5.

6. No writ shall hereafter be issued under the Summary Procedure on Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67). Procedure under Bills of Exchange Act abolished.

J. A., O. 2, r. 6a. See p. 93 as to bills of exchange.

7. The writ of summons in every Admiralty action in rem shall be in Forms Nos. 11 and 12 in Appendix A., Part 1, with such variations as circumstances may require. Writ in Admiralty actions.

See O. 11, r. 1, and J. A., O. 2, r. 7a.

8. Every writ of summons, and also (unless by any statute or by these rules it is otherwise provided) every other writ shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chancellor, or, if the office of Lord Chancellor shall be vacant, in the name of the Lord Chief Justice of England. Date and teste of writ.

J. A., O. 2, r. 8. See O. 72, r. 3.

ORDER III.

Order III.

INDORSEMENTS OF CLAIM.

1. The indorsement of claim shall be made on every writ of summons before it is issued. Indorsement.

J. A., O. 3, r. 1. See p. 84. As to amendments, O. 23, r. 1.

RULES OF THE SUPREME COURT.

Order III. 2. In the indorsement required by Order 2, rule 1, it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled.

**What
necessary
in.**

J. A., O. 3, r. 2. See p. 82 and p. 87, as to indorsement.

Form. 3. The indorsement of claim shall be to the effect of such of the Forms in Appendix A., Part 3, as shall be applicable to the case, or if none be found applicable, then such other similarly concise form as the nature of the case may require.

J. A., O. 3, r. 3. See O. 2, r. 2.

**In repre-
sentative
capacity.** 4. If the plaintiff sues or the defendant or any of the defendants is sued in a representative capacity, the indorsement shall show, in manner appearing by such of the forms in Appendix A., Part 3, Sec. 7, as shall be applicable to the case, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued.

J. A., O. 3, r. 4. See also O. 16, r. 9.

**In Probate
actions.** 5. In Probate actions the indorsement shall show whether the plaintiff claims as creditor, executor, administrator, residuary legatee, legatee, next of kin, heir-at-law, devisee, or in any and what other character.

J. A., O. 3, r. 5.

**Special in-
dorsement.** 6. In all actions where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising (A) upon a contract, express or implied (as, for instance, on a bill of exchange, promissory note, or cheque, or other simple contract debt); or (B) on a bond or contract under seal for payment of a liquidated amount of money; or (C) on a statute where the sum sought to be recovered is a fixed sum of money, or in the nature of a debt *other than a penalty*; or (D) on a guaranty, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand *only*; or (E) on a trust; or **(F) in actions for the recovery of land, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or against persons claiming under such tenant*; the writ of summons may, at the option of the plaintiff, be specially indorsed with a statement of his claim, or of the remedy or relief to which he claims to be

RULES OF THE SUPREME COURT.

entitled. Such special indorsement shall be to the effect **Order III.**
of such of the forms in Appendix C., Sec. 4, as shall be _____
applicable to the case.

J. A., O. 3, r. 6, which has in (D) the words "bill, cheque or nota."

Actions for the recovery of land, with rent or mesne profits, if necessary, are now included. J. A., O. 3, r. 6.

See p. 92 and pp. 93 and 94 as to the particularity necessary to make a special indorsement.

See O. 20, r. 1, which makes the special indorsement the statement of claim, and no further statement allowable.

7. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, besides stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs respectively, and shall further state, that upon payment thereof within four days after service, or in case of a writ not for service within the jurisdiction within the time allowed for appearance, further proceedings will be stayed. Such statement may be in the form in Appendix A., Part 3, Sec. 3. The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the cost of taxation.

Of sum for which action stayed.

J. A., O. 3, r. 7. C. L. P. Act, 1882, s. 8.

The use of this indorsement is obligatory. See p. 85.

8. In all cases in which the plaintiff, in the first instance desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken.

Indorsement of claim for account.

J. A., O. 3, r. 8. See p. 87.

ORDER IV.

Order IV.

INDORSEMENT OF ADDRESS.

1. In all cases where a writ of summons is issued out of the Central Office, the solicitor of a plaintiff suing by a solicitor shall indorse upon the writ and notice in lieu of service of a writ the address of the plaintiff, and also his own name or firm and place of business, and also, if his place of business shall be more than three miles from *the principal entrance of the Central Hall at the Royal Courts of Justice*, another proper place, to be called his

Of solicitor and plaintiff.

RULES OF THE SUPREME COURT.

Order IV. address for service, which shall not be more than three miles from *the principal entrance of the Central Hall at the Royal Courts of Justice*, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him. And where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

Formerly three miles from Temple Bar. *Mee v. Denbigh*, Sol'a J., July 14, 1883, p. 617. J. A., O. 4, r. 1. O. 12, rr. 10, 11, deals with defendant's address.

Of plaintiff in person. 2. In all cases where a writ of summons is issued out of the Central Office, a plaintiff suing in person shall indorse upon the writ and notice in lieu of service of a writ his place of residence and occupation, and also, if his place of residence shall be more than three miles from *the principal entrance of the Central Hall at the Royal Courts of Justice*, another proper place, to be called his address for service, which shall not be more than three miles from *the principal entrance of the Central Hall at the Royal Courts of Justice*, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him.

J. A., O. 4, r. 2.

When writ issued in District Registry. 3. In all cases where a writ of summons is issued out of a District Registry the solicitor of a plaintiff suing by a solicitor shall indorse upon the writ and notice in lieu of service of a writ the address of the plaintiff, and his own name or firm and his place of business, which shall, if his place of business be within the district of the Registry, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and, where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from *the principal entrance of the Central Hall at the Royal Courts of Justice*; and where the solicitor issuing the writ is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor. Where the plaintiff sues in person, he shall

RULES OF THE SUPREME COURT.

indorse upon the writ and notice in lieu of service of a writ his place of residence and occupation, which shall, if his place of residence be within the district, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and, where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from *the principal entrance of the Central Hall at the Royal Courts of Justice.* **Order IV.**

J. A., O. 4, r. 3a. See p. 104, and *Smith v. Dobbin*, 3 Ex. D. 338.

4. *In all cases where proceedings are commenced otherwise than by writ of summons, the preceding Rules of this Order shall apply to the document by which such proceedings shall be originated as if it were a writ of summons.* **Proceedings other than actions.**

This Rule is new.

See O. 54 and 55 as to proceedings originating in chambers and petitions to which this refers.

ORDER V.

Order V.

ISSUE OF WRITS OF SUMMONS.

I. *Place of Issue.*

1. In any action other than a Probate action the Place of plaintiff wherever resident may issue a writ of summons issue. out of any District Registry.

As to importance of time of issue in *Clarke v. Bradlaugh*, see p. 81. J. A., O. 5, r. 1.

2. Every writ of summons not issued out of a District Registry shall be issued out of the Central Office. **Whence issued.**

J. A., O. 5, r. 1a.

See O. 61 and p. 102 as to London; O. 12, r. 1 and 2, as to District Registry; O. 12, r. 4, 5, 6, 7, and O. 35, and p. 90.

When the action goes on in the District Registry, the proceedings are to be taken there, if final judgment can be entered, or an order for an account had by default, down to such judgment or order (O. 35, rr. 1, 2, 3).

3. In all cases where a defendant neither resides nor carries on business within the district out of the Registry whereof a writ of summons is issued, there shall be a statement on the face of the writ of summons that such **Where defendant not within district of Registry.**

RULES OF THE SUPREME COURT.

Order V. defendant may cause an appearance to be entered at his option either at the District Registry or at the Central Office, or a statement to the like effect.

J. A., O. 5, r. 2.

**Where
defendant
is.**

4. In all cases where a defendant resides or carries on business within the district, and a writ of summons is issued out of the District Registry, there shall be a statement on the face of the writ of summons that the defendant do cause an appearance to be entered at the District Registry, or a statement to the like effect.

J. A., O. 5, r. 3.

II. *Assignment of Causes.*

**Choice of
Division.**

5. Subject to the power of transfer, every person by whom any cause or matter may be commenced in the High Court of Justice, which would have been within the non-exclusive cognizance of the High Court of Admiralty if the Principal Act had not passed, shall assign such cause or matter to any one of the Divisions of the said High Court, including the Probate, Divorce, and Admiralty Division, as he may think fit, by marking the document by which the same is commenced with the name of the Division, and giving notice thereof to the proper officer of the Court.

As to transfer, see O. 49, r. 3. Formerly plaintiff in Chancery Division might choose his judge. See p. 5. J. A., O. 5, r. 4, and J. A., 1875, s. 11. See, too, r. 9.

**Assign-
ment to
master in
Q. B. D.**

*6. Every action in the Queen's Bench Division not proceeding in a District Registry shall be assigned to one of the masters of the Supreme Court at the time and in manner provided by O. 54, and all documents and proceedings therein shall thereafter be marked with the name of the master to whom the action has become so assigned, and every application or proceeding therein which by these Rules is to be heard and dealt with by a master, including taxation of the costs, shall be heard and dealt with by such master.

See O. 54, rr. 12—17. See, too, O. 5, r. 14.

Transfer.

*7. Where actions have become assigned to the masters under the provisions of the last preceding rule, it shall be lawful for the Lord Chief Justice of England to transfer all or any number of actions from any one master to any other master.

RULES OF THE SUPREME COURT.

*8. During the absence from illness or any other urgent cause, or during a vacancy in the office, of any master to whom any action may have been assigned, or during any vacation, any other master may hear and dispose of any application therein on behalf or in the place of such master. **Order V.**
Absence of master.

The above three new Rules are important.

According to the Procedure Committee's Report this system of Masters' Lists will make some one Master especially acquainted with the different stages of the same action.

9. Subject to the power of transfer, and to the special provision contained in sub-section (e) of this Rule, and subject also to the power of the Lord Chancellor by order from time to time otherwise to direct, every cause or matter which shall hereafter be commenced in the Chancery Division shall be assigned to and marked with the name of one of the judges thereof in manner hereinafter mentioned, and shall *no longer be marked* with the name of such judge as *the plaintiff or petitioner may in his option think fit*:— **Assignment to judge in Chancery Division.**
See r. 5, note.

This Rule takes the place of J. A., O. 5, r. 4a.

*(a.) Where the commencement is by writ it shall be the duty of the officer issuing such writ to mark the same with the name of one of the judges of the Chancery Division to whom for the time being chambers are attached (to be ascertained in the manner now used in the distribution of business amongst the conveyancing counsel of the Court); **Writ.**

See O. 5, r. 5.

(b.) Where the commencement is by originating summons, such summons shall be taken out in the Writ Department of the Central Office, and it shall be the duty of the officer issuing such summons to mark the same with the name of one of the said judges, to be ascertained in manner aforesaid; **Summons.**

See 15 & 16 Vict. c. 86, s. 45.

(c.) Where the commencement is by notice of motion, such notice of motion shall be brought to the Writ Department of the Central Office, and it shall be the duty of the officer charged by whom originating summonses are issued to mark the same with the name of one of the said judges, to be ascertained in manner aforesaid; **Petitions or motions.**

As to motions, see O. 52, r. 1.

RULES OF THE SUPREME COURT.

Order V.

(d.) Where the commencement is by petition, such petition shall be brought to the office of the Registrars of the Chancery Division and shall be marked by an officer to be charged by the Registrars with that duty with the name of one of the said judges, to be ascertained in manner aforesaid;

As to special petitions, see Dan., 1434. As to petitions of course, Cons. O. 23, r. 17.

Subse-
quent
writs, &c.

(e.) Where a cause or matter has been assigned to one of the said judges as above-mentioned, every subsequent writ, summons, or petition, relating to the administration of the same trust, or the winding up of the same company, or so connected therewith as to be conveniently dealt with by the same judge, shall, whenever practicable, be marked by the proper officer with the name of such judge; and the party or solicitor presenting such writ, summons, or petition shall, if there be to his knowledge such relation or connection, so certify; such certificate shall be in the Form No. 19 in Appendix A., Part I., with such variations as circumstances may require.

J. A., 1873, s. 42. Cf. O. 49, rr. 2 and 5.

III. *Generally.*

Prepara-
tion of
writ.

10. Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written and partly printed, on paper of the same description as by these Rules directed in the case of proceedings directed to be printed.

See O. 66 and J. A., O. 5, r. 5.

Sealing
and issue.

11. Every writ of summons shall be sealed by the proper officer, and shall thereupon be deemed to be issued.

J. A., O. 5, r. 6. See O. 60, r. 1.

Copy to
file.

12. The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy, written or printed, or partly written and partly printed, on paper of the description aforesaid, of such writ, and all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

J. A., O. 5, r. 7.

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13. The officer receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book to be called the Cause Book, which is to be kept in the manner in which Cause Books *are now kept*, and the action shall be distinguished by the date of the year, a letter, and a number, in the manner in which causes are now distinguished in such Cause Books; and when such action shall be commenced in a District Registry, it shall be further distinguished by the name of such Registry.

Order V.

**Filing.
Entry in
Cause
Book.**

J. A., O. 5, r. 8.

14. Notice to the proper officer of the assignment of an action to any Division of the Court shall be sufficiently given by leaving with him the copy of the writ of summons.

**Notice of
assign-
ment of
action.**

As to assignment, see r. 5, and J. A., O. 5, r. 9.

IV. *In particular Actions.*

15. The issue of a writ of summons in Probate actions shall be preceded by the filing of an affidavit made by the plaintiff or one of the plaintiffs in verification of the indorsement on the writ.

Probate.

J. A., O. 5, r. 10.

16. In Admiralty actions in rem a warrant for the arrest of property (*which shall be in the Form No. 17 in Appendix A., Part I., with such variations as circumstances may require*), may be issued at the instance either of the plaintiff or of the defendant at any time after the writ of summons has issued, but no warrant of arrest shall be issued until an affidavit by the party or his agent has been filed, and the following provisions complied with:—

Admiralty.

See O. 9, Part 4, and J. A., O. 5, r. 11a.

(a.) The affidavit shall state the name and description of the party at whose instance the warrant is to be issued, the nature of the claim or counterclaim, the name and nature of the property to be arrested, and that the claim or counterclaim has not been satisfied.

(b.) In an action of wages or of possession the affidavit shall state the national character of the vessel proceeded against; and if against a foreign

RULES OF THE SUPREME COURT.

Order V.

vessel, that notice of the commencement of the action has been given to the Consul of the State to which the vessel belongs, if there be one resident in London (a copy of the notice shall be annexed to the affidavit).

(c.) In an action of bottomry, the bottomry bond, and if in a foreign language also a notarial translation thereof, shall be produced for the inspection and perusal of the Registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit.

(d.) In an action of distribution of salvage the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name, address, and description of the party holding the same.

Waiver in
wages
actions.

17. The Court or a judge may in any case, if they or he think fit, allow the *warrant* to issue, although the affidavit in Rule 16 mentioned may not contain all the required particulars, and in an action of wages the Court or judge may also waive the service of the notice, and in an action of bottomry the production of the bond.

See J. A., O. 5, r. 11a (e).

Order VI.

ORDER VI.

CONCURRENT WRITS.

Con-
current
writs may
be issued.

1. The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; and such seal shall be impressed upon the writ by the proper officer: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

J. A., O. 6, r. 1. Cf. C. L. P. Act, 1852, s. 9, and *Cole v. Sherard*, 11 Ex. 482. As to renewal, see O. 8.

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2. A writ for service within the jurisdiction may be **Order VI.** issued and marked as a concurrent writ with one for For service service, or whereof notice in lieu of service is to be given, within and out of the jurisdiction; and a writ for service, or whereof without notice in lieu of service is to be given, out of the juris- jurisdic- diction may be issued and marked as a concurrent writ tion. with one for service within the jurisdiction.

As to service out of the jurisdiction, see p. 148. J. A., O. 6, r. 2.
C. L. P. Act, 1852, s. 22.

ORDER VII.

Order VII.

I. DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

1. Every solicitor whose name shall be indorsed on any **By plain-** writ of summons shall, on demand in writing made by or **tiff's solici-** on behalf of any defendant who has been served therewith **tor.** or has appeared thereto, declare forthwith *in writing* whether such writ has been issued by him or with his authority or privity; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken there- upon without leave of the Court or a judge.

J. A., O. 7, r. 1.

2. When a writ is sued out by partners in the name of **By** their firm, the plaintiffs or their solicitors shall, on **partners—** demand in writing by or on behalf of any defendant, **plaintiffs.** declare forthwith *in writing* the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. And if the plaintiffs or their solicitor shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a judge may direct. And when the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all proceedings shall, nevertheless, continue in the name of the firm.

See O. 9, r. 6, as to service on persons sued as partners, and p. 68 as to the old difficulties. See also J. A., O. 7, r. 2.

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Order VII

II. CHANGE OF SOLICITORS.

Change of
solicitors.

*3. A party suing or defending by a solicitor shall be at liberty to change his solicitor in any cause or matter, without an order for that purpose, *upon notice of such change being filed in the Central Office, or in the District Registry if the cause or matter is proceeding therein*, but until such notice is *filed and a copy thereof served*, and (in causes or matters pending in the Chancery Division) left in the chambers of the judge to whom the cause or matter is assigned, the former solicitor shall be considered the solicitor of the party.

See Cons. O. 3, r. 3.

As to an appeal signed by new solicitors, see p. 295, and *Kettlewell v. Watson*, W. N. 1883, p. 102.

As to where a party has appeared in person and wishes to be defended by a solicitor, see O. 67, r. 7.

Order VIII

ORDER VIII

RENEWAL OF WRIT.

Length of
currency
of writ.

1. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply *to the Court or a judge* for leave to renew the writ; and the Court or judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal *inclusive*, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked with a seal bearing the date of the day, month and year of such renewal; such seal to be provided and kept for that purpose at the proper office, and to be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum *in Form No. 18 in Appendix A., Part I., with such variations as circumstances may require*; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby

Renewal
for six
months.

RULES OF THE SUPREME COURT:

the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons. **Order VIII.**

Formerly application might also be made to the District Registrar. As to renewal *after* the expiration of the original twelve months, see p. 101. Cf. J. A., O. 8, r. 1.

2. The production of a writ of summons purporting to be marked with the seal of the Court, showing the same to have been renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes. **Renewed writ. Evidence.**

See C. L. P. Act, 1852, s. 18, and J. A., O. 8, r. 2.

*3. Where a writ, of which the production is necessary, has been lost, the Court or a judge, upon being satisfied of the loss, and of the correctness of a copy thereof, may order that such copy shall be sealed and served in lieu of the original writ. **Loss of writ.**

This Rule is new.

ORDER IX.

Order IX.

SERVICE OF WRIT OF SUMMONS.

1. *Mode of Service.*

1. No service of writ shall be required when the defendant, by his solicitor, undertakes in writing to accept service, and enters an appearance. **Undertaking to accept.**

As to penalty for not fulfilling such undertaking, see p. 143; and see O. 12, r. 18; J. A., O. 9, r. 1.

2. When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made; but if it be made to appear to the Court or a judge that the plaintiff is *from any cause* unable to effect prompt personal service, the Court or judge may make such order for substituted or other service, or for the substitution for service of notice *by advertisement or otherwise* for service, as may be just. **Personal. Substituted.**

Application for such order must be on affidavit. See p. 146. J. A., O. 9, r. 2.

RULES OF THE SUPREME COURT.

Order IX.

2. *On particular Defendants.*

Husband
and wife.

3. When husband and wife are both defendants to the action, they shall *both* be served, unless the Court or a judge shall otherwise order.

As to when service on wife alone sufficient, see p. 144. See also J. A., O. 9, r. 3. When they cannot be found, see *Whitby v. Honeywell*, 24 W. R. 851.

Infant.

4. When an infant is a defendant to the action, service on his father or guardian, or if none, then upon the person with whom the infant resides or under whose care he is, shall, unless the Court or judge otherwise orders, be deemed good service on the infant; provided that the Court or judge may order that service made or to be made on the infant shall be deemed good service.

See p. 144. Cf. J. A., O. 9, r. 4. See *Christie v. Cameron*, 4 W. R. 589.

Lunatics.

5. When a lunatic or person of unsound mind not so found by inquisition is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides, or under whose care he is, shall, unless the Court or a judge otherwise orders, be deemed good service on such defendant.

J. A., O. 9, r. 5. And see p. 144. See *Re Crabtree*, L. R. 10 Ch. 201.

3. *On Partners and other Bodies.*

Partners.

6. Where *persons are sued as partners* in the name of their firm, the writ shall be served either upon any one or more of the partners or at the principal place, within the jurisdiction, of the business of the partnership upon any person having at the time of service the control or management of the partnership business there; and subject to these rules, such service shall be deemed good service upon the firm.

See O. 7, r. 2. See also p. 144, and O. 16, r. 14. Cf. J. A., O. 9, r. 6.

Where one
partner
only.

7. Where one person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the firm name, the writ may be served at the principal place within the jurisdiction of the business so carried on upon any person having at the time of service the control or management of the business there;

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and such service, if sufficient in other respects, shall be Order IX.
deemed good service on the person so sued.

J. A., O. 9, r. 6a. See p. 68. See O. 16, r. 15.

8. In the absence of any statutory provision regulating **Corpora-**
service of process, every writ of summons issued against **tions.**
a corporation aggregate may be served on the mayor or
other head officer, or on the town clerk, clerk, treasurer,
or secretary of such corporation; and every writ of sum-
mons issued against the inhabitants of a hundred or
other like district may be served on the high constables
thereof, or any one of them, or, where there is no high
constable, on any other acting chief officer of police of the
county in which such hundred or district is situate; and
every writ of summons issued against the inhabitants of
any county of any city or town, or the inhabitants of
any franchise, liberty, city, town, or place, not being a
part of a hundred or other like district, on some peace
officer thereof; and where by any statute provision is
made for service of any writ of summons, bill, petition,
summons, or other process upon any corporation, or upon
any society or fellowship, or any body or number of per-
sons, whether corporate or unincorporate, every writ of
summons may be served in the manner so provided.

For Statutes regulating service on Corporations, see p. 145. Cf.
J. A., O. 9, r. 7. See C. L. P. Act, 1852, s. 16. See *Madaren v.*
Stainton, 16 Beav. 279.

4. *In Particular Actions.*

9. Service of a writ of summons in an action to recover **Recovery**
land may, in case of vacant possession, when it cannot of land.
otherwise be effected, be made by posting a copy of the
writ upon the door of the dwelling-house or other con-
spicuous part of the property.

J. A., O. 9, r. 8. C. L. P. Act, 1852, s. 170.

*10. In Admiralty actions in rem no service of writ or **Admiralty**
warrant shall be required where the solicitor of the de- **actions.**
fendant agrees to accept service and to put in bail, or to
pay money into Court in lieu of bail.

This Rule is new. See note on O. 9, r. 1.

11. In Admiralty actions in rem the warrant of arrest **Warrant**
shall be served by the Marshal or his substitutes, whether of arrest.
the property to be arrested be situate within the Port
of London or elsewhere within the jurisdiction of the

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Order IX. Court, and the solicitor issuing the warrant shall, within six days from the service thereof, file the same in the Admiralty Registry.

J. A., O. 9, r. 9. R. S. C., Dec., 1875.

Service of writ 12. In Admiralty actions in rem service of a writ of summons *or warrant* against ship, freight, or cargo on board, is to be effected by nailing or affixing the original writ or warrant for a short time on the mainmast, or on the single mast of the vessel, and, on taking off the process, leaving a true copy of it nailed or fixed in its place.

J. A., O. 9, r. 10.

Where cargo landed. 13. If the cargo has been landed or transhipped, service of the writ of summons *or warrant* to arrest the cargo and freight shall be effected by placing the writ or warrant for a short time on the cargo, and, on taking off the process, by leaving a true copy upon it.

See O. 12, r. 24, and J. A., O. 9, r. 11.

When access refused. 14. If the cargo be in the custody of a person who will not permit access to it, service of the writ may be made upon the custodian.

J. A., O. 9, r. 12.

5. Generally.

Indorsement of service. 15. The person serving a writ of summons shall, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default; and every affidavit of service of such writ shall mention the day on which such indorsement was made. This Rule shall apply to substituted as well as other service.

As to mode of service, see p. 150. J. A., O. 9, r. 13. C. L. P. Act, 1852, s. 15. See *Dymond v. Croft*, 24 W. R. 842, and L. T. N. S. 786.

Order X

ORDER X.

SUBSTITUTED SERVICE.

Affidavit. Every application to the Court or a judge for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit

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setting forth the grounds upon which the application is Order X.
made.

See O. 9, r. 2, and p. 146. Cf. J. A., O. 10.

ORDER XI.

Order XI.

SERVICE OUT OF THE JURISDICTION.

See Morgan, p. 459.

*1. Service out of the jurisdiction of a writ of summons When
or notice of a writ of summons may be allowed by the permitted.
Court or a judge whenever—

- (a.) The whole subject-matter of the action is *land* Land.
situate within the jurisdiction (*with or without*
rents or profits)—not “stock or other property”; or
- (b.) Any act, deed, will, contract, *obligation, or liability* Liabilities
affecting land or hereditaments situate within affecting.
the jurisdiction, is sought to be *construed, recti-*
fied, set aside, or enforced in the action; or
- (c.) Any relief is sought against any person domiciled or Relief in
ordinarily resident within the jurisdiction; or contract.
- (d.) The action is for the administration of the personal
estate of any deceased person who at the time of
his death was domiciled within the jurisdiction;
or for the execution (as to property situate within
the jurisdiction) of the trusts of any written
instrument, of which the person to be served is
a trustee, which ought to be executed according
to the law of England; or

Much of this Rule is new.

- (e.) The action is founded on any breach or alleged Breach of
breach within the jurisdiction of any contract contract.
wherever made, which, according to the terms
thereof, ought to be performed within the juris-
diction, unless the defendant is domiciled or
ordinarily resident in Scotland or Ireland; or
- (f.) Any injunction is sought as to anything to be done Injunc-
within the jurisdiction, or any nuisance within tion.
the jurisdiction is sought to be prevented or
removed, whether damages are or are not also
sought in respect thereof; or

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Order XI.

Parties.

(g.) Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction.

As to form of writ for service abroad, &c., see O. 2, rr. 4 and 5. See O. 6, r. 2; O. 9, r. 9; and see p. 148. J. A., O. 11, rr. 1, 1a; C. L. P. Act, 1852, ss. 18, 19.

O. 11 applies to third parties. See p. 79.

Scotland and Ireland.

2. Where leave is asked from the Court or a judge to serve a writ, under the last preceding Rule, in Scotland or in Ireland, if it shall appear to the Court or judge that there may be a concurrent remedy in Scotland or Ireland (as the case may be), the Court or judge shall have regard to the comparative cost and convenience of proceeding in England, or in the place of residence of the defendant, or person sought to be served, and particularly in cases of small demands to the powers and jurisdiction, under the statutes establishing or regulating them, of the Sheriffs' Courts, or Small Debts Courts in Scotland, and of the Civil Bill Courts in Ireland, respectively.

See p. 148. J. A., O. 11, r. 1a. As to limit of jurisdiction, see p. 150.

Probate actions.

3. In Probate actions service of a writ of summons or notice of a writ of summons may by leave of the Court or a judge be allowed out of the jurisdiction.

J. A., O. 11, r. 2.

Affidavit for leave.

4. Every application for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by affidavit, or other evidence, *stating that in the belief of the deponent the plaintiff has a good cause of action*, and showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made; *and no such leave shall be granted unless it shall be made sufficiently to appear to the Court or judge that the case is a proper one for service out of the jurisdiction under this order.*

Rule gives judge further discretion in granting leave.

J. A., O. 11, r. 3. As to practice, see p. 150.

Time for appearance.

5. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance,

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such time to depend on the place or country where or within which the writ is to be served or the notice given. Order XI.

J. A., O. 11, r. 4. As to time, see p. 103.

*6. When the defendant is neither a British subject, nor in British dominions, notice of the writ, and not the writ itself, is to be served upon him. When notice and not writ served.

This Rule is new. See p. 148.

7. Notice in lieu of service shall be given in the manner in which writs of summons are served. Service of notice.

R. S. C., 1875, O. 11, r. 5. For mode of service, see p. 151, and Morgan, p. 452.

ORDER XII.

Order XII.

APPEARANCE.

See p. 102.

1. Except in the cases otherwise provided for by these rules a defendant shall enter his appearance in London. When in London.

J. A., O. 12, r. 1.

2. Appearances entered in London shall be entered in the Central Office. Central Office.

J. A., O. 12, r. 1a.

3. In Probate and Admiralty actions notice of appearances entered shall forthwith be given by the Central Office to the Probate and Admiralty Registries respectively. Probate and Admiralty.

J. A., O. 12, r. 1a.

4. If any defendant to a writ issued in a District Registry resides or carries on business within the district, he shall appear in the District Registry. When in District Registry.

J. A., O. 12, r. 2. As to District Registry writs, see p. 104.

5. If any defendant neither resides nor carries on business in the district, he may appear either in the District Registry or at the Central Office. When in either.

J. A., O. 12, r. 3.

6. If a sole defendant appears, or all the defendants appear, in the District Registry, or if all the defendants who appear appear in the District Registry and the others Effect of in District Registry.

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Order XII. make default in appearance, then, subject to the power of removal in Order 35, Rules 13 to 16, provided the action shall proceed in the District Registry.

J. A., O. 12, r. 4.

Effect of in London. 7. If the defendant appears, or any of the defendants appear, in London, the action shall proceed in London; provided that if the Court or a judge shall be satisfied that the defendant appearing in London is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such Court or judge may order that the action may proceed in the District Registry, notwithstanding such appearance in London.

J. A., O. 12, r. 5.

Entry and notice of. 8. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing dated on the day of its delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. He shall at the same time deliver to the officer a duplicate of the memorandum, which the officer shall seal with the official seal, showing the date on which it is sealed, and then return to the person entering the appearance, and the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal.

J. A., O. 12, r. 6*b*. See also p. 102.

Notice of. 9. A defendant shall, on the day on which he enters an appearance to a writ of summons, give notice of his appearance (Form No. 2 in Appendix A., Part II.) to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself. The notice may be given either by notice in writing served in the ordinary way at the address for service (which, in the case of a writ issued out of a District Registry, must be the address for service within the district), or by prepaid letter directed to that address and posted on the day of entering appearance in due course of post, and shall in either case be accompanied by the sealed duplicate memorandum.

See p. 102. J. A., O. 12, r. 6*b*.

Address for service of defend- 10. The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business, and, if the appearance is entered in the Central Office, a

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place, to be called his address for service, which shall not be more than three miles from *the principal entrance of the Central Hall at the Royal Courts of Justice*, and if the appearance is entered in a District Registry, a place, to be called his address for service, which shall be within the district, and where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor. Order XII.
ant's soli-
citor.

Formerly three miles from Temple Bar. J. A., O. 12, r. 7.

11. A defendant appearing in person shall state in such memorandum his address, and, if the appearance is entered in the Central Office, a place, to be called his address for service, which shall not be more than three miles from *the principal entrance of the Central Hall at the Royal Courts of Justice*, and if the appearance is entered in a District Registry, a place, to be called his address for service, which shall be within the district. Of defend-
ant in
person.

As to address of plaintiff suing in person, see O. 4, r. 2. J. A., O. 12, r. 8.

12. If the memorandum does not contain such address, it shall not be received; and if any such address shall be illusory or fictitious, the appearance may be set aside by the Court or a judge on the application of the plaintiff. Defective
memo-
randum.

J. A., O. 12, r. 9.

13. The memorandum of appearance shall be in the Form No. 1 in Appendix A., Part II., with such variations as circumstances may require. Form.

J. A., O. 12, r. 10.

14. Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the Cause Book. Entry of
in Cause
Book.

J. A., O. 12, r. 11.

15. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall, nevertheless, continue in the name of the firm. Appear-
ance by
partners.

See O. 7, r. 2, and O. 9, r. 6. See also p. 102. Cf. J. A., O. 12, r. 12.

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- Order XII.** 16. Where any person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the name of the firm, he shall appear in his own name; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.
- Where one partner only.**
- See p. 102, and O. 9, r. 7. J. A., O. 12, r. 12a.
- By several.** 17. If two or more defendants in the same action shall appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum.
- J. A., O. 12, r. 13. R. G., H. T., 1853, r. 2.
- Under-taking to appear.** 18. A solicitor not entering an appearance, or putting in bail, or paying money into Court in lieu of bail in an Admiralty action in rem, in pursuance of his written undertaking so to do, shall be liable to an attachment.
- J. A., O. 12, r. 14. See O. 9, rr. 1 and 10, and Hints to Solicitors, p. 32. See also O. 65, r. 5.
- Bail in Admiralty actions.** 19. In Admiralty actions in rem, bail may be taken before the Admiralty Registrar, or before any District Registrar or Commissioner to administer Oaths, in the Supreme Court, and in every case the sureties shall justify.
- Cf. R. S. C. 1875, O. 12, r. 17.
For forms, see Appendix A., Part II.
- Bail bond, when filed.** *20. A bail bond shall not, unless by consent, be filed until after the expiration of twenty-four hours from the time when a notice containing the names and addresses of the sureties and of the Commissioner before whom the bail was taken, shall have been served upon the adverse solicitor, and a copy of the notice verified by affidavit shall be filed with the bail bond.
- Commissioners to take bail.** *21. No Commissioners shall take bail on behalf of any person for whom he or any person in partnership with him is acting as solicitor or agent.
- Rules 20, 21 are new.
- Time of.** 22. A defendant may appear at any time before judgment. If he appear at any time after the time limited by the writ for appearance, he shall not, unless the Court or a judge shall otherwise order, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ.
- See p. 103. Cf. J. A., O. 12, r. 15. C. L. P. Act, 1852, s. 29.

RULES OF THE SUPREME COURT.

23. In Probate actions any person not named in the writ may intervene and appear in the action as heretofore, on filing an affidavit showing how he is interested in the estate of the deceased.

Order XII.
Inter-
vener in
Probate.

J. A., O. 12, r. 16.

24. In an Admiralty action in rem any person not named in the writ may intervene and appear as heretofore, on filing an affidavit showing that he is interested in the res under arrest, or in the fund in the Registry.

Inter-
vener in
Admi-
ralty.

As to arresting cargo, see O. 9, r. 13. J. A., O. 12, r. 17.

25. Any person not named as a defendant in a writ of summons for the recovery of land may by leave of the Court or a judge appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or by his tenant.

Land-
lord in
action for
land.

J. A., O. 12, r. 18. C. L. P. Act, 1852, s. 172. See p. 103.

26. Any person appearing to defend an action for the recovery of land as landlord, in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

Form of
by land-
lord.

J. A., O. 12, r. 19. C. L. P. Act, s. 173. *Gledhill v. Hunter*, 14 Ch. D. 498.

27. Where a person not named as defendant in any writ of summons for the recovery of land has obtained leave of the Court or a judge to appear and defend, he shall enter an appearance, according to the foregoing Rules of this Order, intituled in the action against the party named in the writ as defendant, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action.

Notice of
by land-
lord.

J. A., O. 12, r. 20. C. L. P. Act, s. 174.

28. Any person appearing to a writ of summons for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance or in a notice intituled in the action, and signed by him or his solicitor. Such notice shall be served within four days after appearance; and an appearance, where the defence is not limited as

Limited in
action for
land.

Notice.

RULES OF THE SUPREME COURT.

Order XII above mentioned, shall be deemed an appearance to defend for the whole.

J. A., O. 12, r. 21. See next Rule.

Form of. 29. The notice mentioned in the last preceding Rule shall be in the Form No. 3, in Appendix A., with such variations as circumstances may require.

J. A., O. 12, r. 22. For this form, see Appendix.

Setting aside service before. *30. A defendant before appearing shall be at liberty, without obtaining an order to enter or entering a conditional appearance, to serve notice of motion to set aside the service upon him of the writ or of notice of the writ, or to discharge the order authorising such service.

This Rule is new.

Order XIII.

ORDER XIII.

DEFAULT OF APPEARANCE.

Infants or idiots. 1. Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not so found by inquisition, the plaintiff *shall, before further proceeding with the action against the defendant*, apply to the Court or a judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court or judge at the time of hearing such application shall dispense with such last-mentioned service.

Con. O. Ch., O. 7, r. 3. J. A., O. 13, r. 1. See pp. 104 and 105.

A person being merely in weak health no reason for appointment of guardian ad litem : see *Willyams v. Hodge*, 1 M. & G. 516.

RULES OF THE SUPREME COURT.

2. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance under any of the following Rules of this Order, or under Order 15, Rule 1, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be.

Order
XIII.

Affidavit
of service.

As to penalty for non-appearance, see O. 9, r. 1. And see p. 105. J. A., O. 13, r. 2.

3. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and the defendant fails, or all the defendants, if more than one, fail, to appear thereto, the plaintiff may enter final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified (if any), or (if no rate be specified) at the rate of five per cent. per annum, to the date of the judgment, and costs.

Specially
indorsed
writs.

As to irregularity in defendant's mode of appearance, see p. 103. J. A., O. 13, r. 3 and r. 5. C. L. P. Act, 1852, s. 27.

4. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and there are several defendants, of whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may enter final judgment, as in the preceding Rule, against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with the action against such as have appeared.

Where
several de-
fendants.

See p. 105. J. A., O. 13, r. 4 and r. 5.

5. Where the writ is indorsed with a claim for detention of goods and pecuniary damages, or either of them, and the defendant fails, or all the defendants if more than one fail, to appear, the plaintiff may enter interlocutory judgment, and a writ of inquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of summons. But the Court or a judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way *which the Court or judge may direct*.

Claim for
damages.

Assess-
ment of
damages.

J. A., O. 13, r. 6. As to writ of inquiry, see pp. 106 and 107.

RULES OF THE SUPREME COURT.

Order XIII.

Where
several de-
fendants.

*6. Where the writ is indorsed as in the last preceding Rule mentioned, and there are several defendants, of whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may sign interlocutory judgment against the defendant or defendants so failing to appear, and the value of the goods and the damages, or either of them, as the case may be, may be assessed, as against the defendant or defendants suffering judgment by default, at the same time as the trial of the action or issue therein against the other defendant or defendants, unless the Court or a judge shall otherwise direct. Provided that the Court or a judge may order that instead of a writ of inquiry or trial, the value and amount of damages, or either of them, shall be ascertained in any way which the Court or judge may direct.

This Rule is new.

Claim for
damages
and liqui-
dated
demand.

*7. Where the writ is indorsed with a claim for detention of goods and pecuniary damages, or either of them, and is further indorsed for a liquidated demand, whether specially or otherwise, and any defendant fails to appear to the writ, the plaintiff may enter final judgment for the debt or liquidated demand, interest and costs, against the defendant or defendants failing to appear, and interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in such of the preceding Rules of this Order as may be applicable.

This Rule is also new. See p. 106.

Action for
land.

8. In case no appearance shall be entered in an action for the recovery of land, within the time limited by the writ for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply.

As to recovery of land, see p. 108. J. A., O. 13, r. 7. C. L. P. Act, 1852, s. 177.

And for
mesne pro-
fits, &c.

9. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or damages for breach of contract, upon a writ for the recovery of land, he may enter judgment as in the last preceding Rule mentioned for the land ;

RULES OF THE SUPREME COURT.

and may proceed as in the other preceding Rules of this Order mentioned as to such other claim so indorsed.

**Order
XIII.**

*10. Where judgment is entered pursuant to any of the preceding Rules of this Order, it shall be lawful for the Court or a judge to set aside or vary such judgment upon such terms as may be just.

**Setting
aside
judgment.**

11. Where a defendant fails to appear to a writ of summons issued out of a District Registry, and the defendant had the option of entering an appearance either in the District Registry or in the Central Office, judgment for want of appearance shall not be entered by the plaintiff until after such time as a letter posted in London on the previous evening, in due time for delivery to him on the following morning, ought in due course of post to have reached him.

**Writ in
District
Registry.**

See p. 104. J. A., O. 13, r. 5a. See O. 12, r. 9; O. 67, r. 3.

12. In all actions not by the Rules of this Order otherwise specially provided for, in case the party served with the writ, or in Admiralty actions in rem the defendant, does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, and if the writ is not specially indorsed under Order 3, Rule 6, a statement of claim, the action may proceed as if such party had appeared, subject, as to actions where an account is claimed, to the provisions of Order 15.

**In other
actions.**

J. A., O. 13, r. 9. See p. 105, and p. 107.

*13. In Admiralty actions in rem, upon default of appearance, if, when the action comes before him, the judge is satisfied that the plaintiff's claim is well founded, he may pronounce for the claim with or without a reference to the Admiralty Registrar or to the Admiralty Registrar assisted by merchants, and may at the same time order the property to be appraised and sold, with or without previous notice, and the proceeds to be paid into Court, or may make such order in the premises as he shall think just.

**In Admi-
ralty
actions.**

This Rule is new. See O. 56.

*14. Where the writ is indorsed with a claim on a bond within 8 & 9 Will. III. c. 11, and the defendant fails to

**Suggestion
of breaches**

RULES OF THE SUPREME COURT.

- | | |
|--|---|
| Order
XIII.

in actions
on bond. | appear thereto, no statement of claim shall be delivered, and the plaintiff may at once suggest breaches by delivering a suggestion thereof to the defendant or his solicitor, and proceed as mentioned in the said statute and in 3 & 4 Will. IV. c. 42, s. 16
<i>This Rule also is new.</i>
<i>See Preston v. Davies, L. R. 3 Exch. 19.</i> |
|--|---|

ORDER XIV.

- | | |
|---|--|
| Order
XIV.

Final
judgment
summons.

No copy
affidavit. | <p style="text-align: center;">LEAVE TO SIGN JUDGMENT AND DEFEND WHERE WRIT SPECIALLY INDORSED.</p> <p>1. Where the defendant appears to a writ of summons specially indorsed under Order 3, Rule 6, the plaintiff may, on affidavit made by himself, or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed (if any), and stating that in his belief there is no defence to the action, apply to a judge for liberty to enter final judgment for the amount so indorsed, together with interest, if any, <i>or for recovery of the land (with or without rent or mesne profits), as the case may be</i>, and costs. . . . The judge may thereupon, unless the defendant, by affidavit or otherwise, shall satisfy him that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend, make an order, empowering the plaintiff to <i>enter judgment accordingly</i>.</p> <p style="margin-left: 20px;">Note the extension of this Rule to ejectment.
 Defendant's affidavit must be specific, see p. 97. J. A., O. 14, r. 1. <i>Berry v. Exchange Trading Co.</i>, L. R. 1 Q. B. D. 77.</p> <p>2. The application by the plaintiff for leave to enter final judgment under the last preceding Rule shall be made by summons returnable (1) <i>not less than four clear days after service</i>, (2) <i>accompanied by a copy of the affidavit and exhibits referred to therein</i>.</p> |
|---|--|

A., O. 14, r. 2. Formerly two clear days, see p. 95.

The defendant may show cause against such application (1) by affidavit, or (2) (*except in actions for the recovery of land*) by offering to bring into Court the sum sued on the writ. Such affidavit shall state whether defence alleged goes to the whole or to part only, and

RULES OF THE SUPREME COURT.

(if so) to what part, of the plaintiff's claim. And the judge may, if he think fit, order the defendant, *or, in the case of a Corporation, any officer thereof*, to attend and be examined upon oath: or to produce any *leases, deeds*, books, or documents, or copies of or extracts therefrom.

Order
XIV.

J. A., O. 14, r. 8. See pp. 93 and 97 and p. 173.

4. If it appear that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted, subject to such terms, if any, as to suspending execution, or the payment of the amount levied or any part thereof into Court by the sheriff, the taxation of costs, or otherwise, as the judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim.

Defence
as to part.

J. A., O. 14, r. 4. See p. 98.

5. If it appears to the judge that any defendant has a good defence to or ought to be permitted to defend the action, and that any other defendant has not such defence, and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former.

Where de-
fence by
one de-
fendant
good.

As to signing judgment, see p. 96. J. A., O. 14, r. 5.

6. Leave to defend may be given unconditionally or subject to such terms as to giving security, *or time and mode of trial (in cases which, under these Rules, may be tried without a jury)*, or otherwise, as the judge may think fit.

Leave how
given.

J. A., O. 14, r. 6. The alteration here is important.

ORDER XV.

Order XV.

APPLICATION FOR AN ACCOUNT.

1. Where a writ of summons has been indorsed for an account, under Order 3, Rule 8, *or where the indorsement on a writ of summons involves taking an account*, if the

Summary
order
where
made.

RULES OF THE SUPREME COURT.

Order XV. defendant either fails to appear, or does not after appearance, by affidavit or otherwise, satisfy the Court or a judge that there is some preliminary question to be tried, an order for the *proper* accounts, with all necessary inquiries and directions now usual in the Chancery Division in similar cases, shall be forthwith made.

J. A., O. 15, r. 1. See pp. 87 and 109. See O. 16, Part 5, and O. 55.

How got. 2. An application for such order as mentioned in the last preceding Rule shall be made by summons, and be supported by an affidavit, *where necessary*, filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired.

As to the necessity of an affidavit of service, see O. 13, r. 2, and see p. 105. Cf. J. A., O. 15, r. 2.

Order XVI.

ORDER XVI.

PARTIES.

1. *Generally.*

Plaintiffs. 1. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment
Judgment. may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled
Costs. to his costs occasioned by so joining any person who shall not be found entitled to relief, unless the Court or a judge in disposing of the costs of the action shall otherwise direct.

Cox v. James, 19 Ch. D. 55.

As to the old practice, see p. 42. J. A., O. 16, r. 1, and see

Where an action has been commenced in the name of a wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or a judge may, if satisfied that it has been so commenced through a *bona fide* mistake, and it is necessary for the determination of the real

RULES OF THE SUPREME COURT.

matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as may be just.

Order
XVI.

See *Duckett v. Gover*, 6 Ch. D. 82, and O. 28.

Cf. J. A., O. 16, r. 2. See also p. 43.

*3. Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counterclaim or set-off, he may obtain the benefit thereof by establishing his set-off or counterclaim as against the parties *other than the co-plaintiff* so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon.

Counter-
claim.
Mis-
joinder.

This rule is new. C. L. P. Act, 1860, s. 20.

4. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

Defend-
ants.
Judgment.

J. A., O. 16, r. 3. See p. 74.

The two rules which follow are upon the same lines as Rule 4.

5. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the Court or a judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

Defendant
interested
as to part.

J. A., O. 16, r. 4.

As to when a defendant is embarrassed, see *Smith and Richardson*, 4 C. P. D. 117; and see pp. 44 and 45.

6. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

Several
defendants
liable on
one con-
tract.

J. A., O. 16, r. 5.

7. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties.

Several
defendants
in cases of
doubt.

RULES OF THE SUPREME COURT.

Order XVI.

A defendant wrongly joined will be struck out on his own application: *Valance v. Birmingham Land Corporation*, 2 Ch. D. 369, and see pp. 44 and 45. See also *Twinberrow v. Braid*, 1878 W. N. 169. The plaintiff if successful against one may have to pay the costs of the other: *Child v. Stenning*, 5 Ch. D. 695. J. A., O. 16, r. 6.

Trustees, executors, and ad- ministra- tors.

8. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the Court or a judge may, at any stage of the proceedings, order any of such persons to be made parties, either in addition to or in lieu of the previously existing parties.

Simpson v. Denny, 10 Ch. D. 28; *Mills v. Jennings*, 13 Ch. D. 639; and *Re Cooper*, 1882 W. N. 55. J. A., O. 16, r. 7. See also p. 47.

Parties in the same interest.

9. Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorised by the Court or a judge to defend in such cause or matter, on behalf or for the benefit of all persons so interested.

J. A., O. 16, r. 9. See p. 47. As to where an interest is not represented, see *Fraser v. Cooper, Hall & Co.*, 21 Ch. D. 718.

Probate actions.

10. Subject to the provisions of the Acts and these Rules, in all Probate actions the rules as to parties, in use in the Court of Probate, previously to the commencement of the Principal Act, shall continue to be in force.

J. A., O. 16, r. 12.

Mis- joinder, &c.

11. No cause or matter shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions

Amend- ment.

RULES OF THE SUPREME COURT.

involved in the cause or matter, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every party whose name is so added as defendant shall be served with a writ of summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings, as against such party, shall be deemed to have begun only on the service of such writ of summons or notice.

Order
XVI.

Additions
(p. 42).
Plaintiff or
next
friend.

Defen-
dant.

J. A., O. 16, r. 13. See p. 45 and p. 75.

12. Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court or a judge at any time before trial by motion or summons, or at the trial of the action in a summary manner.

New plain-
tiffs and
defen-
dants.

Such applications usually made by summons : *Wilson v. Church*, 9 Ch. D. 552, and must not be made *ex parte*. See *Tildesley v. Harper*, 3 Ch. D. 277.

J. A., O. 16, r. 14. See p. 43.

13. Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered by the Court or a judge, file an amended copy of and sue out a writ of summons, and serve such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served.

How
served
with amen-
ded writ.

J. A., O. 16, r. 15. See Jessel, M.R.'s, remarks In re *Wortley*, *Culley v. Wortley*, 4 Ch. D. 181.

2. Partners.

14. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and any party to an action may in such case apply by summons to a judge for a statement of the names of the persons who were, at the time of the accruing of the cause of action, co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the judge may direct. *Provided that, in the case of a co-partnership which has been dissolved, to the knowledge of the plaintiff, before the commencement of the action, the*

Partners.

RULES OF THE SUPREME COURT.

Order XVI.

writ of summons shall be served upon every person sought to be made liable.

See *Ex parte Young, In re Young*, 19 Ch. D. 124.
J. A., O. 16, r. 10, p. 68. See O. 7, r. 2; O. 9, r. 6; O. 12, r. 15;
O. 42, r. 10.

Single partner.

15. Any person carrying on business in the name of a firm apparently consisting of more than one person may be sued in the name of such firm.

See O. 9, r. 7. As to service when he is out of the jurisdiction, see *O'Neil v. Clason*, 9 Q. B. D. 355.
J. A., O. 16, r. 10, and p. 69.

3. *Persons under Disability.*

Infants and married women.

16. Infants may sue as plaintiffs by their next friends, in the manner heretofore practised in the Chancery Division, and may, in like manner, defend by their guardians appointed for that purpose. Married women may sue and be sued *as provided for by the Married Women's Property Act, 1882.*

J. A., O. 16, r. 8. See p. 51. See, too, Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), sec. 1, s. 2 and 5, and secs. 12 to 18 inclusive; *McQueen v. Turner*, 30 W. R. 80, and *Threlfall v. Wilson*, 8 P. D. 18. As to infants, see rr. 18, 19, 20, 21, and 22; O. 9, r. 4; O. 13, r. 1; O. 19, r. 13; O. 34, r. 5; and p. 54.

Lunatics and idiots.

17. Where lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the Principal Act have sued as plaintiffs or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend, according to the practise of the Chancery Division, and may in like manner defend any action by their committees or guardians appointed for that purpose.

As to an action for necessities against a lunatic, see late case of *In re Weaver*, 21 Ch. D. 615.

J. A., O. 18. See p. 67. See Morgan, p. 487.

Guardian ad litem.

18. An infant shall not enter an appearance except by his guardian ad litem. No order for the appointment of such guardian shall be necessary, but the solicitor applying to enter such appearance shall make and file an affidavit in the Form No. 8 in Appendix A., Part II., with such variations as circumstances may require.

Rules, May, 1883. See O. 13, r. 1.

RULES OF THE SUPREME COURT.

*19. Every infant served with a petition or notice of motion, or summons in a matter, shall appear on the hearing thereof by a guardian ad litem in all cases in which the appointment of a special guardian is not provided for. No order for the appointment of such guardian shall be necessary, but the solicitor by whom he appears shall previously make and file an affidavit as in the last Rule mentioned.

Order
XVI.

In peti-
tions, &c.

This is a new rule. As to who may not be appointed, see p. 54.

20. Before the name of any person shall be used in any action as next friend of any infant, or other party, or as relator, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the Central Office, or in the District Registry if the cause or matter is proceeding therein.

Authority
of next
friend.

15 & 16 Vict. c. 86, s. 11.

21. In all causes or matters to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure shall, if given with the consent of the Court or a judge by the next friend, guardian, committee, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no disability and had given such consent. Provided that no such consent by any committee of a lunatic shall be valid as between him and the lunatic unless given with the sanction of the Lord Chancellor or Lords Justices sitting in Lunacy.

Consent by
next
friend, &c.

Ch. O., Feb. 5, 1861. See *Morgan*, p. 477. As to guardian's costs, *Morgan v. Morgan*, 11 Jur. N. S., 233.

4. *Proceedings by or against Paupers.*

*22. Any person may be admitted in the manner heretofore accustomed to sue or defend as a pauper on proof that he is not worth £25, his wearing apparel and the subject-matter of the cause or matter only excepted.

Paupers.

Cons. O. 7 and 40, and R. G. H. T., 1853, rr. 121, 122, and R. G. T. T., 1853, r. 28.

*23. A person desirous of suing as a pauper shall lay a case before counsel for his opinion whether or not he has reasonable grounds for proceeding.

Case before
counsel.

Cons. O. 7, r. 8.

RULES OF THE SUPREME COURT.

Order XVI.	*24. No person shall be permitted to sue as a pauper unless the case laid before counsel for his opinion, and his opinion thereon, with an affidavit of the party, or his solicitor, that the case contains a full and true statement of all the material facts to the best of his knowledge and belief, shall be produced before the Court or judge or proper officer to whom the application is made, and no fee shall be payable by a pauper to his counsel or solicitor.
Affidavit verifying case.	
Fees.	
Court fees.	*25. A person admitted to sue or defend as a pauper shall not be liable to any court fee.
Assignment of counsel or solicitor.	*26. Where a person is admitted to sue or defend as a pauper the Court or a judge may, if necessary, assign a counsel or solicitor, or both, to assist him, and a counsel or solicitor so assigned shall not be at liberty to refuse his assistance unless he satisfies the Court or judge that he has some good reason for refusing. Cons. O. 7, r. 10. The remarks of the judge who tried the Phoenix Park Murder Trial will here occur to the reader; and compare the practice in murder cases in England where the accused has not retained counsel.
No remuneration from paupers.	*27. Whilst a person sues or defends as a pauper no person shall take, or agree to take, or seek to obtain from him any fee, profit, or reward, for the conduct of his business in the Court, and any person who takes, or agrees to take, or seeks to obtain any such fee, profit, or reward shall be guilty of a contempt of Court. Cons. O. 7, r. 9.
Dispauperation.	*28. If any person admitted to sue or defend as a pauper gives, or agrees to give, any such fee, profit, or reward, he shall be forthwith dispaupered, and shall not be afterwards admitted again in the same cause to sue or defend as a pauper. Cons. O. 7, r. 9.
Interlocutory proceedings.	*29. No notice of motion shall be served or summons issued, and no petition shall be presented, on behalf of any person admitted to sue or defend as a pauper, except for the discharge of his solicitor, unless it is signed by his solicitor. Cons. O. 7, r. 11.
Solicitor's duties as to.	*30. It shall be the duty of the solicitor assigned to a person admitted to sue or defend as a pauper to take care that no notice is served, or summons issued, or petition presented, without good cause. Cons. O. 7, r. 11.
Taxation of costs.	*31. Costs ordered to be paid to a person admitted to sue or defend as a pauper shall, unless the Court or a judge otherwise directs, be taxed as in other cases. Cons. O. 40, r. 5.

RULES OF THE SUPREME COURT.

5. *Administration and Execution of Trusts.*

Order
XVI.

32. In any case in which the right of an heir-at-law or the next of kin or a class shall depend upon the construction which the Court or a judge may put upon an instrument, and it shall not be known or shall be difficult to ascertain who is or are such heir-at-law or next of kin or class, and the Court or judge shall consider that in order to save expense or for some other reason it will be convenient to have the questions of construction determined before such heir-at-law, next of kin, or class shall have been ascertained by means of inquiry or otherwise, the Court or judge may appoint some one or more persons to represent such heir-at-law, next of kin, or class, and the judgment of the Court or judge in the presence of such persons shall be binding upon the heir-at-law, next of kin, or class so represented.

Persons
appointed
to repre-
sent a class.

Chester v. Phillips, 4 Ch. D. 280; *Beale v. Rusten*, W.N. 1878, 129. J. A., O. 16, r. 9a.

*33. Any residuary legatee or next of kin *entitled* to a judgment or order for the administration of the personal estate of a deceased person, may have the same without serving the remaining residuary legatees or next of kin.

Who need
not be
served.

Wade v. Broadhurst, 24 W. R. 232.

See 15 & 16 Vict. c. 86, s. 42, and Dan. Ch. Pr., ed. 5, pp. 192 *et seq.*

*34. Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, and who may be entitled to a judgment or order for the administration of the estate of a deceased person, may have the same without serving any other legatee or person interested in the proceeds of the estate.

Where
legatee's
legacy
charged on
realty.

*35. Any residuary devisee or heir entitled to the like judgment or order, may have the same without serving any co-residuary devisee or co-heir.

Devisee or
co-heir.

*36. Any one of several cestuis que trust under any deed or instrument *entitled* to a judgment or order for the execution of the trusts of the deed or instrument, may have the same without serving any other cestui que trust.

Cestui que
trust.

*37. In all cases of actions for the prevention of waste or otherwise for the protection of property, one person may sue on behalf of himself and all persons having the same interest.

Actions
for protec-
tion, &c.

RULES OF THE SUPREME COURT.

Order XVI

Judgment
against
legatees,
&c.
Conduct of
action.

*38. Any executor, administrator, or trustee *entitled* thereto may have a *judgment or order* against any one legatee, next of kin, or cestui que trust for the administration of the estate or the execution of the trusts.

*39. The Court or a judge may require any person to be made a party to any action or proceeding, and may give the conduct of the action or proceeding to such person as he may think fit, and may make such order in any particular case as he may think just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question.

Rules 38 to 39 inclusive are the first seven Rules under 15 & 16 Vict. c. 86, s. 42.

See *In re Swire, Mellor v. Swire*, 21 Ch. D. 647. See also p. 206.

Service of
notice of
order, &c.

40. Wherever, in any action for the administration of the estate of a deceased person or the execution of the trusts of any deed or instrument, or for the partition or sale of any hereditaments, a judgment or an order has been pronounced or made—

(a.) Under Order 15 ;

(b.) Under Order 33 ;

(c.) Affecting the rights or interests of persons not parties to the action :

the Court or a judge may direct that any persons interested in the estate or under the trust or in the hereditaments, shall be served with notice of the judgment or order, and after such notice such persons shall be bound by the proceedings in the same manner as if they had originally been made parties, and shall be at liberty to attend the proceedings under the judgment or order. Any person so served may, within one month after such service, apply to the Court or judge to discharge, *vary*, or add to the judgment or order.

Cf. Cons. O. 23, r. 18, and *Morgan*, p. 187. As to service on an infant, see r. 44.

Order to
attend un-
necessary.

41. It shall not be necessary for any person served with notice of any judgment or order to obtain an order for liberty to attend the proceedings under such judgment or order, but such person shall be at liberty to attend the proceedings upon entering an appearance in the Central Office in the same manner, and subject to the same provisions as a defendant entering an appearance.

Rules of May, 1883.

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42. A memorandum of the service upon any person of notice of the judgment or order in any action under Rule 40 shall be entered in the Central Office upon due proof by affidavit of such service.

**Order
XVI.**

Entry of
service.

Cons. O. 23, r. 19.

43. Notice of a judgment or order served pursuant to Rule 40 shall be entitled in the action, and there shall be indorsed thereon a memorandum in the Form No. 28 in Appendix G.

Form of
notice of
order.

Cons. O. 23, r. 20.

44. Notice of a judgment or order on an infant or person of unsound mind not so found by inquisition shall be served in the same manner as a writ of summons in an action.

Service on
infants, &c.

J. A., O. 16, r. 12a. See O. 9, rr. 4, 5, as to service of writ, and p. 55. See Morgan, p. 189.

45. In any cause or matter to execute the trusts of a will it shall not be necessary to make the heir-at-law a party, but the plaintiff shall be at liberty to make the heir-at-law a party where he desires to have the will established against him.

Where
heir-at-law
a party.

Cons. O. 7, r. 1.

46. If in any cause, matter, or other proceeding it shall appear to the Court or a judge that any deceased person who was interested in the matter in question has no legal personal representative, the Court or a judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for all the purposes of the cause, matter, or other proceeding on such notice to such persons, if any, as the Court or a judge shall think fit, either specially or generally by public advertisement, and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the cause, matter, or proceeding.

Appoint-
ment of re-
presenta-
tive of de-
ceased.

15 & 16 Vict. c. 86, s. 44, omitting last clause. See *Swallow v. Binns*, 9 Hare App., xlvii.

47. In any cause or matter for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave of the Court or a judge, be entitled to appear either in Court

Parties to
adminis-
tration
proceed-
ing.

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or in Chambers on the claim of any person not a party to the cause or matter against the estate of the deceased person in respect of any debt or liability. *The Court or a judge may direct or give liberty to* any other party to the cause or matter to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as they or he shall think fit.

J. A. O. 16, r. 12b. See p. 206, as to where two actions have been commenced for the same purpose. As to costs *Sharp v. Lush*, 10 Ch. D. 478, and Hints to Solicitors, p. 150 and p. 185.

6. *Third Party Procedure.*

As to third party as defendant to counterclaim, see O. 21, 11—15

Notice to
third party
in cases of
contribu-
tion, &c.

48. Where a defendant claims to be entitled to *contri-
bution, or indemnity* [only] over against any person not a party to the action; he may, by leave of the Court or a judge, issue a notice (hereinafter called the third party notice) to that effect, stamped with the seal with which writs of summons are sealed. A copy of such notice shall be filed with the proper officer and served on such person according to the rules relating to the service of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court or a judge, be served within the time limited for delivering his defence. Such notice may be in the form or to the effect of the Form No. 1 in Appendix B., with such variations as circumstances may require, and therewith shall be served a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action.

J. A., O. 16, r. 18. See p. 70; and as to service on third parties out of the jurisdiction, see p. 79.

The right to bring in a third party is now confined to where the defendant claims contribution or indemnity against the third party, while power is given to give judgment for the defendant against the third party, and so deal with everything at once. Moreover a defendant claiming contribution or indemnity against a co-defendant can now get relief.

Appear-
ance by.

49. If a person not a party to the action, who is served as mentioned in Rule 48 (hereinafter called the third party), desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the third party must enter an appearance in the action within eight days from the service of the notice.

In case of In default of his so doing, he shall be deemed to admit

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the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the third party notice. Provided always, that a person so served and failing to appear within the said period of eight days may apply to the Court or a judge for leave to appear, and such leave may be given upon such terms, if any, as the Court or a judge shall think fit.

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XVI.**

non-ap-
pearance.

Cf. J. A., O. 16, r. 20. See p. 71.

*50. Where a third party makes default in entering an appearance in the action, in case the defendant giving the notice suffer judgment by default, he shall be entitled at any time, after satisfaction of the judgment against himself, or before such satisfaction by leave of the Court or a judge, to enter judgment against the third party to the extent of the contribution or indemnity claimed in the third party notice: provided that it shall be lawful for the Court or a judge to set aside or vary such judgment upon such terms as may seem just.

Default by.
Judgment
against.

Power to
set aside.

*51. Where a third party makes default in entering an appearance in the action, in case the action is tried and results in favour of the plaintiff, the judge who tries the action may, at or after the trial, enter such judgment as the nature of the case may require for the defendant giving the notice against the third party: provided that execution thereof be not issued without leave of the judge until after satisfaction by such defendant of the verdict or judgment against him. And if the action is finally decided in the plaintiff's favour, otherwise than by trial, the Court or a judge may, on application by motion or summons, as the case may be, order such judgment as the nature of the case may require to be entered for the defendant giving the notice against the third party at any time after satisfaction by the defendant of the amount recovered by the plaintiff against him.

Default by.
Judgment
on trial of
action.

Execution.

*52. If a third party appears pursuant to the third-party notice, the defendant giving the notice may apply to the Court or a judge for directions, and the Court or a judge, upon the hearing of such application, may, if satisfied that there is a question proper to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the

Trial as
between
defendant
and.

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question of such liability, as between the third party and the defendant giving the notice, to be tried in such manner, at or after the trial of the action, as the Court or judge may direct; and, if not so satisfied, may order such judgment as the nature of the case may require to be entered in favour of the defendant giving the notice against the third party.

Rules 50, 51 and 52 are new.

Liberty to defend.

53. The Court or a judge upon the hearing of the application mentioned in Rule 52, may, if it shall appear desirable to do so, give the third party liberty to defend the action, upon such terms as may be just, or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken, *documents to be delivered*, or amendments to be made, and give such directions as to the Court or judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the third party shall be bound or made liable by the judgment in the action.

J. A., O. 16, r. 21. See p. 74.

Costs.

54. The Court or a judge may decide all questions of costs, as between a third party and the other parties to the action, and may order any one or more to pay the costs of any other or others, or give such direction as to costs as the justice of the case may require.

Piller v. Roberts, 21 Ch. D. 198, Kay, J. ; and *Benyon v. Godden*, 4 Ex. D. 241. See, too, p. 74 and p. 80.

Contribution, &c., against co-defendant.

*55. Where a defendant claims to be entitled to contribution or indemnity against any other defendant to the action, a notice may be issued and the same procedure shall be adopted, for the determination of such questions between the defendants, as would be issued and taken against such other defendant, if such last-mentioned defendant were a third party ; but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the action.

See Appendix B, Form No. 1. As to alternative relief, see pp. 74 and 78. R. S. C. 1875, O. 16, r. 17 ; and J. A., O. 16, r. 18.

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ORDER XVII.

Order
XVII.

CHANGE OF PARTIES BY DEATH, &c.

*1. A *cause or matter* shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title pendente lite; and, *whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered, notwithstanding the death.* Statement.

J. A., O. 50, r. 1. See p. 56

C. L. P. Act, 1852, ss. 135-142, and C. L. P. Act, 1854, s. 92.

Cona. O. 32; and see Dan. Ch. Pr., ed. 5, pp. 1377 *et seq.*

2. In case of the marriage, death, or bankruptcy, or Joinder of devolution of estate by operation of law, of any party to a cause or matter, the Court or a judge may, if it be deemed necessary for the complete settlement of all the questions involved, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party, or be served with notice in such manner and form as hereinafter prescribed, and on such terms as the Court or judge shall think just, and shall make such order for the disposal of the cause or matter as may be just. representative.

J. A., O. 50, r. 2. See p. 58. See note to r. 1.

3. In case of an assignment, creation, or devolution of any estate or title pendente lite, the cause or matter may be continued by or against the person to or upon whom such estate or title has come or devolved. Continuance by or against new parties.

J. A., O. 50, r. 3. *Att.-Gen. v. Birmingham Corporation*, 15 Ch. D. 423, C. A.

4. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of a *cause or matter*, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the *cause or matter*, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party. Adding or changing parties.

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<p>Order XVII. Application ex parte.</p>	<p>in another capacity, an order that the proceedings shall be carried on between the continuing parties, and such new party or parties, may be obtained ex parte on application to the Court or a judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence.</p> <p>An order for change is generally an order of course : <i>Roffey v. Miller</i>, 1875 W. N. 225. J. A., O. 50, r. 4. See p. 62.</p>
<p>Service of order Effect.</p>	<p>5. An order obtained as in the last preceding Rule mentioned shall, unless the Court or judge shall otherwise direct, be served upon the continuing party or parties, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following Rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the cause or matter shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons.</p> <p>J. A., O. 50, r. 5.</p>
<p>Application to discharge order.</p>	<p>6. Where any person who is under no disability or under no disability other than coverture, or being under any disability other than coverture, but having a guardian ad litem in the <i>cause or matter</i>, shall be served with such order as in Rule 4 mentioned, such person may apply to the Court or a judge to discharge or vary such order at any time within twelve days from the service thereof.</p> <p>J. A., O. 50, r. 6.</p>
<p>Time. By person under disability.</p>	<p>7. Where any person being under any disability other than coverture, and not having a guardian ad litem in the <i>cause or matter</i>, is served with any order as in Rule 4 mentioned, such person may apply to the Court or a judge to discharge or vary such order at any time within twelve days from the appointment of a guardian ad litem for such party, and until such period of twelve days shall have expired such order shall have no force or effect as against such last-mentioned person.</p> <p>J. A., O. 50, r. 7.</p>
<p>Where party entitled fails to proceed.</p>	<p>8. When the plaintiff or defendant in a cause or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the</p>

RULES OF THE SUPREME COURT.

person against whom the cause or matter may be continued) may apply by summons to compel the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered; and in default of such proceeding, judgment may be entered for the defendant, or as the case may be, for the person against whom the cause or matter might have been continued; and in such case, if the plaintiff has died, execution may issue as in the case provided for by Order 42, Rule 23.

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Motion v. King, 29 W. R. 73, and see p. 61.
C. L. P. Act, 1854, s. 92.

9. Where any cause or matter becomes abated or in the case of any such change of interest as is by this Order provided for, the solicitor for the plaintiff or person having the conduct of the cause or matter, as the case may be, shall certify the fact to the proper officer, who shall cause an entry thereof to be made in the Cause Book opposite to the name of such cause or matter.

**Abate-
ment to be
entered in
Cause
Book.**

Cons. O. 21, r. 7.

10. Where any cause or matter shall have been standing for one year in the cause-book marked as "abated," or standing over generally, such cause or matter at the expiration of the year shall be struck out of the Cause Book.

**Abated
cause to be
struck out.
When.**

Cons. O. 21, r. 8.

ORDER XVIII.

**Order
XVIII.**

JOINDER OF CAUSES OF ACTION.

1. Subject to the following rules of *this Order*, the plaintiff may unite in the same action several causes of action, but if it appear to the Court or a judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or a judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

**When
allowed.**

J. A., O. 17, r. 1. See p. 44, and O. 20, r. 7. *Smith v. Richardson*, 4 C. P. D. 116.

2. No cause of action shall, unless by leave of the Court or a judge, be joined with an action for the re-

**With
action for
land.**

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covery of land, except claims in respect of mesne profits or arrears of rent *or double value* in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held, *or for any wrong or injury to the premises claimed.*

J. A., O. 17, r. 2. See p. 64 and *Gledhill v. Hunter*, 14 Ch. D. 492; and as to the time to apply for leave, *Musgrave v. Stevens*, W. N. 1881, 163; as to counter-claim, *Compton v. Preston*, 21 Ch. D. 138.

Claims by trustee in bankruptcy.

3. Claims by a trustee in bankruptcy as such shall not, unless by leave of the Court or a judge, be joined with any claim by him in any other capacity.

J. A., O. 17, r. 3.

Husband and wife.

4. Claims by or against husband and wife may be joined with claims by or against either of them separately.

J. A., O. 17, r. 4. C. L. P. Act, 1852, s. 40. See p. 63.

Executor or administrator.

5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

J. A., O. 17, r. 5. See p. 65 and *Macdonald v. Carington*, 4 C. P. D. 38.

Joint and several.

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

J. A., O. 17, r. 6. See *Johnson v. Burgess*, 47 L. J. Ch. 552.

Qualification.

7. The last three preceding Rules shall be subject to Rules 1, 8 and 9 of this Order.

J. A., O. 17, r. 7.

Application to strike out.

8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of together, may at any time apply to the Court or a judge for an order confining the action to such of the causes of action as may be conveniently disposed of together.

J. A., O. 17, r. 8.

Order to strike out causes of action.

9. If, on the hearing of such application as in the last preceding Rule mentioned, it shall appear to the Court or a judge that the causes of action are such as cannot all be conveniently disposed of together, the Court or judge may order any of such causes of action to be excluded,

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and *consequential amendments to be made*, and may make such order as to costs as may be just.

Order
XVIII.

J. A., O. 17, r. 9. C. L. P. Act, 1852, s. 41. See also O. 19, r. 27.

ORDER XIX.

Order
XIX.

PLEADING GENERALLY.

As to amendment, see O. 23.

1. The following rules of pleading shall be used in the New rules High Court of Justice.

J. A., O. 19, r. 1. J. A., 1873, s. 100. See O. 72.

2. The plaintiff shall, subject to the provisions of Outline. Order 20, and at such time and in such manner as therein prescribed, deliver to the defendant a statement of his *claim*, and of the relief or remedy to which he claims *Claim*. to be entitled. The defendant shall, subject to the provisions of Order 21, and at such time and in such manner as therein prescribed, deliver to the plaintiff his defence, *Defence*. set-off, or counter-claim (if any), and the plaintiff shall, subject to the provisions of Order 23, and at such time and in such manner as therein prescribed, deliver his reply (if any) to such defence, set-off, or counter-claim. *Reply*. Such statements shall be as brief as the nature of the case will admit, and the taxing officer in adjusting the costs of the action shall, at the instance of any party, *or may without any request*, inquire into any unnecessary prolixity, *Costs of prolixity*. and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

J. A., O. 19, r. 2. For Forms, see App. C., D., E., and r. 5. See Rules, Costs. O. 6, sch., R. 18. As to writ, see O. 2, r. 2.

3. A defendant in an action may set off, or set up, by *Set-off and counter-claim*. way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a judge may, on the application of the plaintiff before trial, if in the opinion of the Court or judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be

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allowed, refuse permission to the defendant to avail himself thereof.

J. A., O. 19, r. 3. J. A., 1878, s. 24, s.-s. 3. Forms, App. D. and E. See p. 130. See O. 21.

Contents.

4. Every pleading shall contain, and *contain only*, a statement *in a summary form* of the material facts on which the party pleading relies *for his claim or defence*, as the case may be, but not the evidence by which they are to be proved, and shall, *when necessary*, be divided into paragraphs, numbered consecutively. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary; but *where pleadings have been settled by counsel or special pleader they shall be signed by him*, and if not so settled they shall be signed *by the solicitor or by the party* if he sues or defends in person.

Signature of plead- ings.

J. A., O. 19, r. 4. See r. 2. See p. 113.

Forms.

5. The Forms in Appendices C., D., and E., when applicable, and where they are not applicable forms of the like character, as near as may be, shall be used for all pleadings, and where such forms are applicable and sufficient any longer forms shall be deemed prolix, and the costs occasioned by such prolixity shall be disallowed to or borne by the party so using the same, as the case may be.

As to writs, O. 3, r. 3. Cf. also O. 65, r. 11.

Particu- lars to be stated.

*6. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the Forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading; provided that, if the particulars be of debt, expenses, or damages, and exceed three folios, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading.

This is new.

Further and better.

*7. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars, may in all cases be ordered,

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upon such terms, as to costs and otherwise, as may be just. Order
XIX

P. 110. For Forms, see App. K., 11, 12, 13.

*8. The party at whose instance particulars have been delivered under a judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the delivery of the particulars that he had at the return of the summons. Save as in this Rule provided, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings, or give any extension of time. Time for
pleading
after par-
ticulars.

Order for
no stay.

R. G. H. T. 1853, r. 21. See p. 110.

9. Every pleading which shall contain less than ten folios (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading, not being a petition or summons, shall be printed. Printing.

J. A., O. 19, r. 5. See O. 66, r. 7. *Webb v. Dornford*, 46 L. J. Ch. 288.

10. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed with the proper officer. How de-
livered.

J. A., O. 19, r. 6. See O. 67, rr. 4, 5. See, too, p. 57, and p. 107.

11. Every pleading shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, and with the reference to the letter and number of the action, the Division to which, and the judge (if any) to whom the action is assigned belongs, the title of the action, the description of the pleading, and *shall be indorsed with* the name and place of business of the solicitor and agent, if any, delivering the same, or the name and address of the party delivering the same if he does not act by a solicitor. Delivery
to parties.
How
marked.

J. A., O. 19, r. 7. See O. 41, r. 1. As to indorsement of address see O. 4.

12. Nothing in these Rules contained shall affect the right of any defendant to plead not guilty by statute. And every defence of not guilty by statute shall have the Not guilty
by statute.

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same effect as a plea of not guilty by statute has heretofore had. But if the defendant so plead he shall not plead any other defence to the same cause of action without the leave of the Court or a judge.

J. A., O. 19, r. 16. R. G. T. T., 1853, r. 21. See p. 125. See, too, O. 21, r. 21.

Allegations not denied ad- mitted.

13. Every allegation of fact in any pleading in an action, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition.

J. A., O. 19, r. 17.

Where under the very same words in the J. A. Rule the defendant in his defence merely "put the plaintiffs to prove the allegations of their claim," and did not appear at the trial, it was held that the statement of claim was admitted, and that no evidence need be adduced: *Harris v. Gamble*, 7 Ch. D. 877; see, too, *Green v. Sevin*, 13 Ch. D. 589. As to evasive denial, see *Tildesley v Harper*, 10 Ch. D. 393, C. A. Wilson, ed. 3, p. 258.

But see O. 21, r. 22, and also p. 124.

Conditions precedent.

*14. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant (as the case may be); and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

This Rule is new. C. L. P. Act, 1852, s. 57. See p. 122.

Facts to raise issues.

15. The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counter-claim *not to be maintainable*, or that the transaction is *either void or voidable in point of law*, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as for instance, fraud, Statute of Limitations, release, *payment, performance, facts showing illegality either by statute or common law, or Statute of Frauds.*

J. A., O. 19, r. 18. See O. 25 as to proceedings in lieu of demurrer.

This does not apply to petitions or summonses.

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16. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

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Inconsis-
tent plead-
ings.

J. A., O. 19, r. 19. See *Williamson v. L. & N. W. R.*, 12 Ch. D. 787.

17. It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, or for a plaintiff in his reply to deny generally the grounds alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth *except damages*.

Specific
denial ne-
cessary.

J. A., O. 19, r. 20.

18. Subject to the last preceding Rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading, if any, subsequent to reply, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of facts in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

Joinder of
issue.

J. A., O. 19, r. 21. See p. 125. O. 23, r. 5.

19. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an *allegation* is made with divers circumstances, it shall not be sufficient to deny *it along with those circumstances*.

Evasive
denial.

J. A., O. 19, r. 22.

See Cons. Ord. 15, r. 2. Wilson, p. 260, says: "As to the strictness with which this Rule is construed, see *Thorp v. Holdsworth*, L. R. 3 Ch. D. 637, M. R.; *Byrd v. Nunn*, L. R. 5 Ch. D. 711, Fry, J.; 7 Ch. D. 284, C. A. As to conditions under which leave to amend will be given when an evasive denial has been pleaded, see *Tildesley v. Harper*, 10 Ch. D. 393, C. A."

20. When a contract, promise, or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express

Illegality;
Statute of
Frauds.

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contract, promise, or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise, or agreement, whether with reference to the Statute of Frauds or otherwise.

J. A., O. 19, r. 23. See p. 126. For Forms, see App. D.

Contents of docu- ments.

21. Whenever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

J. A., O. 19, r. 24. See p. 116, and *Harris v. Warre*, 4 C. P. D. 125.

Malice, fraud, &c.

22. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

J. A., O. 19, r. 25. See App. C., s. 6, Nos. 13, 14; App. D., s. 2 and s. 4, and p. 4. *Derry v. Garrett*, 7 Ch. D. 483 and 489.

Notice.

23. Wherever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or *the circumstances from which such notice is to be inferred*, be material.

J. A., O. 19, r. 26.

Implied contract.

24. Wherever any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances, without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

J. A., O. 19, r. 27. See App. C., s. 2, Nos. 11, 12, and C. A. s. 4, No. 11, and s. 5, Nos. 1 and 2.

Burden of proof.

25. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied. (E.g.—

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Consideration for a bill of exchange where plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.)

**Order
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J. A., O. 19, r. 28.

*26. No technical objection shall be raised to any pleading on the ground of any alleged want of form.

No technical objections.

This Rule is new. As to the close of the pleadings, see O. 23, r. 5.

27. The Court or a judge may at any stage of the proceedings order to be struck out or amended any matter in any *indorsement or pleading* which may be *unnecessary* or scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if they or he shall think fit, order the *costs of the application to be paid as between solicitor and client.*

Amending and striking out.

J. A., O. 27, r. 1. See p. 115. See O. 23, r. 1. As to matters arising during action, see O. 24.

28. In actions in any Division for damage by collision between vessels, unless the Court or a judge shall otherwise order, the solicitor for the plaintiff shall, within seven days after the commencement of the action, and the solicitor for the defendant shall *within seven days after appearance*, and before any pleading is delivered, file with the *Registrar, Master*, or other proper officer, as the case may be, a document to be called a Preliminary Act, which shall be sealed up and shall not be opened until ordered by the Court or a judge, and which shall contain a statement of the following particulars:—

Actions for collision.

J. A., O. 19, r. 30.

(a.) The names of the vessels which came into collision and the names of their masters.

(b.) The time of the collision.

(c.) The place of the collision.

(d.) The direction and force of the wind.

(e.) The state of the weather.

(f.) The state and force of the tide.

(g.) The course and speed of the vessel when the other was first seen.

(h.) The lights, if any, carried by her.

(i.) The distance and bearing of the other vessel when first seen.

(k.) The lights, if any, of the other vessel which were first seen.

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(l.) Whether any lights of the other vessel, other than those first seen, came into view before the collision.

(m.) What measures were taken, and when, to avoid the collision.

(n.) The parts of each vessel which first came into contact.

Defence of compulsory pilotage.

The Court or a judge *may order* the Preliminary Acts to be opened and the evidence to be taken thereon without its being necessary to deliver any pleadings; but in such case, if either party intends to rely on the defence of *compulsory pilotage*, he may do so, and shall give notice thereof in writing to the other party, within two days from the opening of the Preliminary Act.

Formerly the consent of both solicitors was necessary. See the *John Boyne*, 25 W. R. 756, and 36 L. T. 29 P. D.

Order XX.

ORDER XX.

STATEMENT OF CLAIM.

Delivery of claim.

*1. The delivery of statements of claim shall be regulated as follows:—

Where writ specially indorsed.

(a.) Where the writ is specially indorsed under Order 3, Rule 6, *no further statement of claim shall be delivered*, but the indorsement on the writ shall be deemed to be the statement of claim;

Need not be delivered unless required.

(b.) Subject to the provisions of Order 13, Rule 12, as to filing a statement of claim when there is no appearance, no statement of claim need be delivered unless the defendant at the time of entering appearance, or within eight days thereafter, *gives notice in writing to the plaintiff* or his solicitor that he requires a statement of claim to be delivered;

Time for delivery.

(c.) If no statement of claim has been delivered and the defendant gives notice requiring the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the Court or a judge, deliver it within *five weeks* from the time of the plaintiff receiving such notice;

When may be delivered.

(d.) The plaintiff may (except as in (a.) mentioned) deliver a statement of claim, either with the

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writ of summons or notice in lieu of writ of **Order XX.**
summons, or at any time afterwards either
before or after appearance, notwithstanding
that the defendant may have appeared *and not*
required the delivery of a statement of claim:
Provided that in no case where a defendant has
appeared shall a statement be delivered more
than six weeks after the appearance has been
entered unless otherwise ordered by the Court
or a judge.

- (e.) Where a plaintiff delivers a statement of claim without being required to do so, or the defendant unnecessarily requires such statement, the Court or a judge may make such order as to *the costs* occasioned thereby as shall be just, if it appears that the delivery of a statement of claim was unnecessary or improper. **Costs of unnecessary.**

The alterations here will be best learnt by comparing this Rule with J. A., O. 21, r. 1. *Green v. Coleby*, 1 Ch. D. 698.

2. In Probate actions the plaintiff shall, unless otherwise ordered by the Court or a judge, deliver his statement of claim within six weeks from the entry of appearance by the defendant, or from the time limited for his appearance, in case he has made default; but where the defendant has appeared the plaintiff shall not be compelled to deliver it until the expiration of eight days after the defendant has filed his affidavit as to scripts. **Probate.**

J. A., O. 21, r. 2. See O. 16, r. 10.

3. In Admiralty actions in rem the plaintiff shall, within twelve days from the appearance of the defendant, deliver his statement of claim. **Admiralty.**

J. A., O. 21, r. 3. See O. 29.

*4. Whenever a statement of claim is delivered the plaintiff may therein alter, modify, or extend his claim without any amendment of the indorsement of the writ. **Amendment of writ unnecessary.**

This Rule is new. See p. 87. See also as to amendments, p. 123, and O. 25.

5. The statement of claim must in all cases in which it is proposed that the trial should be elsewhere than in Middlesex, show the proposed place of trial. **Venue.**

J. A., O. 36, r. 1. See **Forms, App. A., Part I., Nos. 2 et seq.**

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Claim for
general
relief.

6. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and *it shall not be necessary to ask for general or other relief* which may always be given, as the Court or a judge may think just, to the same extent as if it had been asked for. And the same rule shall apply to any counterclaim made, or relief claimed by the defendant, in his defence.

J. A., O. 19, r. 8. See p. 33. *Watson v. Rodwell*, 3 Ch. D. 380, C.A.

Distinct
claim or
defences.

7. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct *grounds* they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counterclaim founded upon separate and distinct facts.

The allegations must be specific, see p. 121. J. A., O. 19, r. 9. See O. 18.

Settled
account.

8. In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars, but in every case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same shall not be alleged in the pleadings.

This Rule is new. See O. 19, rr. 6 and 7. See p. 120.

Denial of
interest in
Probate.

9. In Probate actions where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

J. A., O. 19, r. 12.

Order XXI.

ORDER XXI.

DEFENCE AND COUNTERCLAIM.

*1. In actions for a debt or liquidated demand in money, comprised in Order 3, rule 6, a mere denial of the debt shall be inadmissible.

Cf. O. 19, rr. 18 and 19.

Actions on
bills of ex-
change.
fence.

*2. In actions upon bills of exchange, promissory notes, or cheques, a defence in denial must deny some matter of

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fact; *e.g.*, the drawing, making, endorsing, accepting, presenting, or notice of dishonour of the bill or note.

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This Rule is new. See p. 125 as to evasive denial.

*3. In actions comprised in Order 3, Rule 6, classes (A.) and (B.), a defence in denial must deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed; *e.g.*, in actions for goods bargained and sold or sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed; in an action for money had and received, it must deny the receipt of the money, or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff.

Actions in
O. 3, r. 6.

Defence
must deny
matters of
fact.

This Rule is new. See p. 126. Cf. R. G. T. T., 1853, rr. 6, 11, 15.

*4. No denial or defence shall be necessary as to damages claimed or their amount; but they shall be deemed to be put in issue in all cases, unless expressly admitted.

Defence as
to
damages.

This Rule is new.

5. If either party wishes to deny the right of any other party to claim as executor, or as trustee whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

Denial of
representative
capacity
must be
specific.

J. A., O. 19, r. 11. Cf. O. 16, r. 32 et seq.

6. Where a statement of claim is delivered to a defendant he shall deliver his defence *within ten days* from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the Court or a judge.

Time for
delivery of
defence.

Formerly eight days. J. A., O. 22, r. 1. See O. 20, r. 1.

7. A defendant who has appeared in an action, and who has neither received nor required the delivery of a statement of claim, must deliver his defence (if any) at any time *within ten days* after his appearance, unless such time is extended by the Court or a judge.

Where
no state-
ment of
claim.

Formerly eight days. J. A., O. 22, r. 2. See O. 20, r. 1.

8. Where leave has been given to a defendant to defend under Order 14, he shall deliver his defence (if any) within such time as shall be limited by the order giving

Defence
under
O. 14

RULES OF THE SUPREME COURT.

Order him leave to defend, or if no time is thereby limited, then
XXI. within eight days after the order.

J. A., O. 22, r. 3.

Costs 9. Where the Court or a judge shall be of opinion that
when alle- any allegations of fact denied or not admitted by the de-
gations fence ought to have been admitted, the Court *or judge*
improperly may make such order as shall be just with respect to any
denied. extra costs occasioned by their having been denied or not
admitted.

J. A., O. 22, r. 4. *Atkins v. Taylor*, W. N. 1876, p. 11.

Defence 10. Where any defendant seeks to rely upon any
by way of grounds as supporting a right of counterclaim, he shall, in
counter- his statement of defence, state specifically that he does so
claim. by way of counterclaim.

J. A., O. 19, r. 10. See O. 19, r. 3.

Counter- 11. Where a defendant by his defence sets up any
claim counterclaim which raises questions between himself and
against the plaintiff along with any other persons, he shall add to
plaintiff the title of his defence a further title similar to the title
along with in a statement of claim, setting forth the names of all the
other persons who, if such counterclaim were to be enforced by
persons. cross-action, would be defendants to such cross-action, and
shall deliver his statement of defence to such of them as
are parties to the action within the period within which
he is required to deliver it to the plaintiff.

J. A., O. 22, r. 5, As to counterclaim, see p. 130; see also p. 71.

Service on 12. Where any such person as in the last preceding
such other Rule mentioned is not a party to the action, he shall be
persons. summoned to appear by being served with a copy of the
defence, and such service shall be regulated by the same
Rules as are hereinbefore contained with respect to the
service of a writ of summons, and every defence so served
shall be indorsed in the Form No. 2 in Appendix B., or
to the like effect.

J. A., O. 22, r. 6.

Appear- 13. Any person not a defendant to the action, who is
ance by served with a defence and counterclaim as aforesaid, must
such other appear thereto as if he had been served with a writ of
persons. summons to appear in an action.

J. A., O. 22, r. 7. See p. 79. O. 12, r. 8.

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14. Any person named in a defence as a party to a counterclaim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim.

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Time for
delivery of
reply.

J. A., O. 22, r. 8. See Rule 6. Cf. O. 24, rr. 1, 2.

15. Where a defendant sets up a counterclaim, if the plaintiff or any other person named in manner aforesaid as party to such counterclaim contends that the claim thereby raised ought not to be disposed of by way of counterclaim, but in an independent action, he may at any time before reply apply to the Court or a judge for an order that such counterclaim may be excluded, and the Court or a judge may, on the hearing of such application, make such order as shall be just.

Excluding
counter-
claim.

J. A., O. 22, r. 9. *The Sir Charles Napier*, 5 P. D. 73, C. A.

*16. If, in any case in which the defendant sets up a counterclaim, the action of the plaintiff is stayed, discontinued, or dismissed, the counterclaim may nevertheless be proceeded with.

Beddall v. Maitland, 17 Ch. D. 183.

17. Where in any action a set-off or counterclaim is established as a defence against the plaintiff's claim, the Court or a judge may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

Judgment
for balance
of set-off.

J. A., O. 22, r. 10. *Rolfe v. Maclaren*, 3 Ch. D. 106.

18. In Probate actions the party opposing a will may, with his defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in respect of costs as he would have been under similar circumstances, according to the practice of the Court of Probate, before the *Principal Act* came into operation.

Probate.
Notice to
prove in
solemn
form, and
cross-
examine
witnesses.

J. A., O. 22, r. 11.

19. In every case in which a party shall plead the general issue, intending to give the special matter in evidence by virtue of an Act of Parliament, he shall insert in the margin of his pleading the words "by

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statute," together with the year of the reign in which the Act of Parliament on which he relies was passed, and also the chapter and section of such Act, and shall specify whether such Act is public or otherwise; otherwise such defence shall be taken not to have been pleaded by virtue of any Act of Parliament.

R. G. T. T., 1853, 21. See p. 125.

Pleas in
abate-
ment.

20. No plea or defence shall be pleaded in abatement.

J. A., O. 19, r. 13. See p. 129.

Defendant
in posses-
sion need
not plead
title.

21. No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends on any equitable estate or right, or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession, *and it shall be taken to be implied in such statement that he denies, or does not admit, the allegations of fact contained in the plaintiff's statement of claim.* He may nevertheless rely upon any ground of defence which he can prove except as hereinbefore mentioned.

J. A., O. 19, r. 15. *Danford v. M'Anulty*, 6 Q. B. D. 645. See p. 47.

Order XXII.

ORDER XXII.

PAYMENT INTO AND OUT OF COURT AND TENDER.

When
allowed.

1. Where any action is brought to recover a debt or damages, any defendant may, before or at the time of delivering his defence, or at any later time by leave of the Court or a judge, pay into Court a sum of money by way of satisfaction, **which shall be taken to admit the claim or cause of action in respect of which the payment is made; or he may, with a defence denying liability (except in actions or counterclaims for libel or slander), pay money into Court which shall be subject to the provisions of Rule 6: Provided that in an action on a bond under the statute 8 & 9 Will. III. c. 11, payment into Court shall be admissible to particular breaches only, and not to the whole action.*

Cf. J. A., O. 30, r. 1. See J. A., 1875, sec. 24. *The latter part of this Rule is new.* See Day's C. L. P. Act, ed. 2, p. 64.

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2. Payment into Court shall be *signified* in the defence, and the claim or cause of action in satisfaction of which such payment is made shall be specified therein.

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J. A., O. 30, r. 1.

Must be
signified in
the
defence.
Tender
before
action.

*3. With a defence setting up a tender before action, the sum of money alleged to have been tendered must be brought into Court.

This Rule is new. See r. 7.

4. If the defendant pays money into Court before delivering his defence, he shall serve upon the plaintiff a notice specifying both the fact that he has paid in such money, and also the claim or cause of action in respect of which such payment has been made. Such notice shall be in the Form No. 3 in Appendix B., with such variations as circumstances may require.

Cf. J. A., O. 30, r. 2.

*5. *In the following cases of* payment into Court under this Order, viz. :—

How paid
out.

(a.) When payment into Court is made before delivery of defence :

(b.) When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into Court is made, is not denied in the defence :

(c.) When payment into Court is made with a defence setting up a tender of the sum paid :

the money paid into Court shall be paid out to the plaintiff on his request, or to his solicitor on the plaintiff's written authority, unless the Court or a judge shall otherwise order.

Cf. J. A., O. 30, r. 3. C. L. P. Act, 1852, s. 72.

*6. When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into Court has been made, is denied in the defence, the following rules shall apply :—

When
liability of
defendant
denied.

(a.) The plaintiff may accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, in which case he shall be entitled to have the money paid out to him as hereinafter provided, notwithstanding the defendant's denial of liability, whereupon all further proceedings,

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Order XXII.

in respect of such claim or cause of action, except as to costs, shall be stayed; or the plaintiff may refuse to accept the money in satisfaction and reply accordingly, in which case the money shall remain in Court subject to the provisions hereinafter mentioned:

(b.) If the plaintiff accepts the money so paid in, he shall, after service of such notice in the Form No. 4 in Appendix B. as is in Rule 7 mentioned, or after delivery of a reply accepting the money, be entitled to have the money paid out to himself on request, or to his solicitor on the plaintiff's written authority, unless the Court or a judge shall otherwise order:

(c.) If the plaintiff does not accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, but proceeds with the action in respect of such claim or cause of action, or any part thereof, the money shall remain in Court and be subject to the order of the Court or a judge, and shall not be paid out of Court except in pursuance of an order. If the plaintiff proceeds with the action in respect of such claim or cause of action, or any part thereof, and recovers less than the amount paid into Court, the amount paid in shall be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and the balance (if any) shall, under such order, be repaid to the defendant. If the defendant succeeds in respect of such claim or cause of action, the whole amount shall, under such order, be repaid to him.

This Rule is new.

**Plaintiff
may accept
in satis-
faction.**

*7. The plaintiff, when payment into Court is made before delivery of defence, may within four days after the receipt of notice of such payment, or when such payment is first signified in a defence, may before reply, accept in satisfaction of the claim or cause of action in respect of which such payment has been made the sum so paid in, in which case he shall give notice to the defendant in the Form No. 4 in Appendix B., and shall be at liberty, in case the entire claim or cause of action is thereby satisfied,

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to tax his costs *after the expiration of four days from the service of such notice, unless the Court or a judge shall otherwise order*, and in case of non-payment of the costs within forty-eight hours after such taxation, to sign judgment for his costs so taxed. **Order XXII.**

J. A., O. 30, r. 4. See Appendix B., and Wilson, ed. 3, p. 289.

*8. Where money is paid into Court in two or more actions which are consolidated, and the plaintiff proceeds to trial in one, and fails, the money paid in and the costs in all the actions shall be dealt with under this Order in the same manner as in the action tried. Several actions consolidated. Costs.

This Rule is new. Cf. R. G. H. T., 1853, 13.

*9. A plaintiff may, in answer to a counterclaim, pay money into Court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into Court by a defendant. Counter-claim Satisfaction.

*10. Where money is paid into Court in the Queen's Bench Division under the certificate of a Master or Associate, such payment must be expressly authorised in such certificate. Under Master's certificate.

This Rule is new.

*11. Money paid into Court under an order of the Court or a judge or certificate of a Master or Associate shall not be paid out of Court except in pursuance of an order of the Court or a judge: Provided that, where before the delivery of defence money has been paid into Court by the defendant pursuant to an order under the provisions of Order 14, he may (unless the Court or a judge shall otherwise order) by his pleading appropriate the whole or any part of such money, and any additional payment if necessary, to the whole or any specified portion of the plaintiff's claim; and the money so appropriated shall thereupon be deemed to be money paid into Court pursuant to the preceding Rules of this Order relating to money paid into Court, and shall be subject in all respects thereto. Not to be paid out except under order of Court.

This Rule is new. Cf. Chancery Fund Rules, 1874.

*12. In the Chancery Division, the manner of payment into and out of Court, and the manner in which money in Court shall be dealt with, shall be subject to the Rules for the time being in force under the Court of Chancery Funds Act, 1872. In Chancery Division.

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In Queen's
Bench
Division.

*13. In the Queen's Bench Division, unless the cause or matter is proceeding in a District Registry, and unless and until any other provision shall be made by Parliament in that behalf, money paid into Court shall be paid into the Bank of England (Law Courts Branch), and the manner of payment into and out of Court, and the manner in which money in Court shall be dealt with, shall be subject to the regulations contained in Appendix M., which the Masters of the Supreme Court, or any four of them, with the consent of the Governor and Company of the Bank of England, may from time to time modify by way of addition or substitution: Provided that if any Act shall be passed relating to funds in Court in any Division of the Supreme Court, all money so paid into Court shall be subject to such Rules as may be made under that Act, so far as applicable thereto.

This Rule is new. In District Registry, see O. 35, r. 23.

Money in
Court
when
these
Rules
come into
effect.

*14. All money standing in Court in the Queen's Bench Division on the day on which these Rules come into operation shall thereupon be subject in all respects to the provisions of this Order.

This Rule is new.

Award to
infant or
lunatic.

*15. In any cause or matter in the Queen's Bench Division in which a sum of money has been awarded to or recovered by an infant, or person of unsound mind not so found by inquisition, the Court or a judge may at or after the trial order that the whole or any part of such sum shall be paid into Court to the credit of an account in-

Dividends.

tituled in the cause or matter; and any sum so paid into Court, and any dividends or interest thereon, shall be subject to such orders as may from time to time be made by the Court or a judge concerning the same, and may either be invested, or be paid out of Court, or transferred to such persons, to be held and applied upon and for such trusts and in such manner as the Court or judge shall direct.

This Rule is new.

Sale or
transfer.

*16. Money paid into Court or securities purchased under the provisions of the last preceding Rule, and the dividends or interest thereon, shall be sold, transferred, or paid out to the party entitled thereto, pursuant to the order of the Court or a judge.

*17. Cash under the control of or subject to the order

RULES OF THE SUPREME COURT.

of the Court may be invested in Bank Stock, East India Stock, Exchequer Bills, and £2 10s. per cent. annuities, and upon mortgage of freehold and copyhold estates respectively in England and Wales, as well as in Consolidated, Reduced, and New £3 per cent. annuities.

**Order
XXII.**

vestments
authorised.

This Rule is new. Cf. Chaucery Fund Rules, 1874, r. 60.

*18. Every application for the purpose of the conversion of any stocks, funds, or securities into any other stocks, funds, or securities authorised by the last preceding Rule, shall be served upon the trustees thereof, if any, and upon such other persons, if any, as the Court or judge shall think fit.

Applica-
tion for
conver-
sion.
Service.

This Rule is new.

*19. Subject to any provision which may hereafter be made for that purpose by Parliament, or under any Rules to be made by the authority of Parliament, all money paid into Court in Admiralty actions not proceeding in a District Registry shall be paid to the account of "the Admiralty Registrar" at the Bank of England (Law Courts Branch), upon receivable orders to be obtained in the Admiralty Registry.

In Admi-
ralty
actions.

Where
payable.

This Rule is new. See Rule 21.

*20. Money paid into Court in an Admiralty action shall not be paid out of Court except in pursuance of an order of the Court or a judge.

Judge's
order
necessary.

This Rule is new.

*21. A solicitor desiring to prevent the payment of money out of Court in an Admiralty action shall file a notice, and thereupon a caveat shall be entered in a book to be kept in the Admiralty Registry called the "Caveat Payment Book."

Caveat
Payment
Book.

This Rule is new.

ORDER XXIII.

**Order
XXIII.**

REPLY AND SUBSEQUENT PLEADINGS.

1. A plaintiff shall deliver his reply, if any, in Admiralty actions within six days, and in other actions within twenty-one days, after the defence or the last of the delivery.

Reply.

Time for
delivery.

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defences shall have been delivered, unless the time shall be extended by the Court or a judge.

Formerly "three weeks." J. A., O. 24, r. 1. See p. 140. As to when pleaded after time, see pp. 141 and 142.

Sub-
sequent
pleadings.
Leave.

2. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or a judge, and then shall be pleaded only upon such terms as the Court or judge shall think fit.

J. A., O. 24, r. 2.

Sub-
sequent
pleadings.
Time for
delivery.

3. Subject to the last preceding Rule, every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading, unless the time shall be extended by the Court or a judge.

J. A., O. 24, r. 3.

Counter-
claim.

*4. Where a counterclaim is pleaded, a reply thereto shall be subject to the Rules applicable to statements of defence.

This Rule is new. See pp. 140 and 141. See O. 19, r. 3.

Joinder of
issue.

5. As soon as any party has joined issue upon *the preceding* pleading of the opposite party simply without adding any further or other pleading thereto, *or has made default as mentioned in Order 27, Rule 13*, the pleadings as between such parties shall be deemed to be closed.

Close of
pleadings.

J. A., O. 25. See p. 139.

No new
assign-
ment.

6. No new assignment shall be necessary or used. But everything which was formerly alleged by way of new assignment may hereafter be introduced by amendment of the statement of claim, or by way of reply.

J. A., O. 19, r. 14. Day's C. L. P. Act, ed. 2, p. 76.

Order XXIV.

ORDER XXIV.

MATTERS ARISING PENDING THE ACTION.

Fresh
ground of
defence to
claim; or
counter-
claim

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be raised by the defendant in his statement of defence, either alone or together with other

RULES OF THE SUPREME COURT.

grounds of defence. And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counterclaim alleged therein by the defendant, it may be raised by the plaintiff in his reply, either alone or together with any other ground of reply.

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XXIV.

J. A., O. 20, r. 1. *Toke v. Andrews*, 8 Q. B. D. 428.

2. Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counterclaim arises after reply, or after the time limited for delivering a reply, has expired, the plaintiff may, within eight days after such ground of defence has arisen, or at any subsequent time by leave of the Court or a judge, deliver a further defence or further reply as the case may be, setting forth the same.

After deli-
very of
statement
of defence.

J. A., O. 20, r. 2. See pp. 123 and 137.

3. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last Rule mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence (which confession may be in the Form No. 5 in Appendix B., with such variations as circumstances may require), and may thereupon sign judgment for his costs up to the time of the pleading of such defence, unless the Court or a judge shall, either before or after the delivery of such confession, otherwise order.

Confes-
sion of
defence.

Judgment
for costs.

J. A., O. 20, r. 3. *Poster v. Gamgee*, 1 Q. B. D. 666.

ORDER XXV.

Order
XXV.

PROCEEDINGS IN LIEU OF DEMURRER.

*1. *No demurrer shall be allowed.*

Demurrer
abolished.

An important change is here introduced, see p. 152, et seq.

*2. Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the Court or a judge on the application of either party, the

Point of
law may be
raised.

RULES OF THE SUPREME COURT.

Order XXV.	same may be set down for hearing and disposed of at any time before the trial.
When decision of such point of law disposes of action.	*3. If, in the opinion of the Court or a judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counterclaim, or reply therein, the Court or judge may thereupon dismiss the action or make such other order therein as may be just.
Pleading may be struck out.	*4. The Court or a judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just.
What objection not allowed.	*5. No action or proceeding shall be open to objection, on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right, whether any consequential relief is or could be claimed or not.

Rules 1—5 inclusive are new. Ch. Pro. Act, 1852, s. 50.

Order XXVI.	ORDER XXVI.
	DISCONTINUANCE.
Before receipt of defence.	1. The plaintiff may, at any time before receipt of the defendant's defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action <i>against all or any of the defendants</i> or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay such defendant's costs of the action, or, if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this Rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the Court or a judge, but the Court or a judge may before, or at, or after the hearing or trial, upon such terms as to
Costs.	
By leave.	

RULES OF THE SUPREME COURT.

costs, and as to any other action, and otherwise, *as may be just*, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counterclaim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave.

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Defence
or counter-
claim may
be struck
out.

J. A., O. 23, r. 1. *Varasseur v. Krupp*, 15 Ch. D. 474.

2. When a cause has been entered for trial, it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing, signed by the parties.

By con-
sent.

J. A., O. 23, r. 2. See O. 21, r. 16.

3. *Any* defendant may *enter* judgment for the costs of the action, if it is wholly discontinued *against him*, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued, *in case such respective costs are not paid within four days after taxation*.

Judgment
for costs.

J. A., O. 23, r. 2a. *Bolton v. Bolton*, 3 Ch. D. 276.

*4. If any subsequent action shall be brought before payment of the costs of a discontinued action, for the same, or substantially the same, cause of action, the Court or a judge may, if they or he think fit, order a stay of such subsequent action, until such costs shall have been paid.

Sub-
sequent
action may
be stayed
if costs
unpaid.

This is a new Rule. See Daniel, p. 568.

ORDER XXVII.

Order
XXVII.

DEFAULT OF PLEADING.

1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court or a judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the Court or judge may, if no statement of claim shall have been delivered, order the

Claim not
delivered
in time.

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action to be dismissed accordingly, or may make such other order on such terms as the Court or judge shall think just.

J. A., O. 29, r. 1. See p. 141. *Lumsden v. Winter*, 8 Q. B. D. 650.

Where
claim
for liqui-
dated
demand.

2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that purpose, deliver a defence, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs.

J. A., O. 29, r. 2. *Dix v. Groom*, 5 Ex. D. 91.

Where one
of several
defendants
makes de-
fault.

3. When in any such action as in the last preceding Rule mentioned there are several defendants, if one of them make default as mentioned in the last preceding Rule, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.

J. A., O. 29, r. 3. See O. 21.

Where
claim for
goods or
damages.

4. If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant or all the defendants, if more than one, make default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants, and a writ of inquiry shall issue to assess the value of the goods, and the damages, or the damages only, as the case may be. But the Court or a judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way which the Court or judge may direct.

J. A., O. 29, r. 4.

Where
several de-
fendants.

5. When in any such action as in Rule 4 mentioned there are several defendants, if one or more of them make default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants so making default, and proceed with his action against the others. And in such case the value and amount of damages against the defendant making default shall be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the Court or a judge shall otherwise direct.

J. A., O. 29, r. 5.

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6. If the plaintiff's claim be for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only, and any defendant make default as mentioned in Rule 2, the plaintiff may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in Rules 4 and 5.

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Where
claim for
debt or
damages.

J. A., O. 29, r. 6.

7. In an action for the recovery of land, if the defendant makes default as mentioned in Rule 2, the plaintiff may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs.

For re-
covery of
land.

J. A., O. 29, r. 7. See Rule 2.

8. Where the plaintiff has endorsed a claim for mesne profits, arrears of rent, or double value in respect of the premises claimed or any part of them, or damages for breach of contract upon a writ for the recovery of land, if the defendant makes default as mentioned in Rule 2, or if there be more than one defendant, some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants and proceed as mentioned in Rules 4 and 5.

Recovery
of land
and
damages.

J. A., O. 29, r. 8.

*9. If the plaintiff's claim be for a debt or liquidated demand, the detention of goods and pecuniary damages, or for any of such matters, or for the recovery of land, and the defendant delivers a defence, which purports to offer an answer to part only of the plaintiff's alleged cause of action, the plaintiff may by leave of the Court or a judge enter judgment, final or interlocutory, as the case may be, for the part unanswered; provided that the unanswered part consists of a separate cause of action, or is severable from the rest, as in the case of part of a debt or liquidated demand: provided also that, where there is a counterclaim, execution on any such judgment as above mentioned in respect of the plaintiff's claim shall not issue without leave of the Court or a judge.

Claim for
debt or
detention.

Judgment.

This Rule is new.

10. In Probate actions, if any defendant make default

In Probate
actions.

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in filing and delivering a defence, the action may proceed, notwithstanding such default.

J. A., O. 29, r. 9.

In other actions.

11. In all other actions than those in the preceding Rules of this Order mentioned, if the defendant makes default in delivering a defence, the plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the Court or a judge shall consider the plaintiff to be entitled to.

J. A., O. 29, r. 10. As to extension of time, see p. 142.

Where several defend- ants.

12. Where, in any such action as mentioned in the last preceding Rule, there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either (if the cause of action is severable) set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.

J. A., O. 29, r. 11.

Where no reply de- livered or subse- quent pleading.

13. If the plaintiff does not deliver a reply, or any party does not deliver any subsequent pleading within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and all the material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue.

J. A., O. 29, r. 12. *Litton v. Litton*, 3 Ch. D. 793.

Issues, other than between plaintiff and de- fendant.

14. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the Court or a judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the Court or judge may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.

J. A., O. 29, r. 13.

How judg- ment by default may be set aside.

15. Any judgment by default, whether under this Order or under any other of these Rules, may be set aside by the Court or a judge, upon such terms as to costs or otherwise as such Court or judge may think fit.

J. A., O. 29, r. 14. *Attwood v. Chichester*, 3 Q. B. D. 722, C. A.

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ORDER XXVIII.

Order
XXVIII.

AMENDMENT.

1. The Court or a judge may, at any stage of the proceedings, allow either party to amend *his indorsement or pleadings*, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Leave for.
Object of.

J. A., O. 27, r. 1. The clause in this Rule as to striking out scandalous and embarrassing matter is here omitted. See p. 83, and *Chesterfield Co. v. Black*, 25 W. R. 409.

2. The plaintiff may, without any leave, amend his statement of claim, *whether indorsed on the writ or not*, once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who shall have last appeared. By plain-
tiff when
without
leave.

Cf. O. 16, r. 13. J. A., O. 27, r. 2. The Judicature Act introduced amendment by the plaintiff without leave at Common Law. As to amendment of defence, see next Rule, and *Boddy v. Wall*, 7 Ch. D. 164.

3. A defendant who has set up any counterclaim or set-off may, without any leave, amend such counterclaim or set-off at any time before the expiration of the time allowed him for *answering* the reply and before *such answer*, or in case there be no reply then at any time before the expiration of twenty-eight days from defence. By de-
fendant.

J. A., O. 27, r. 3. As to the amendment of the defence, see p. 125 and 127.

4. Where any party has amended his pleading under either of the last two preceding Rules, the opposite party may, within eight days after the delivery to him of the amended pleading, apply to the Court or a judge to disallow the amendment, or any part thereof, and the Court or judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may be just. When
amend-
ments dis-
allowed.

J. A., O. 27, r. 4. See p. 141.

5. Where any party has amended his pleading under Rules 2 or 3, the *opposite* party shall *plead to the amended* party. Of opposite
party.

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Time for. *pleading, or amend his pleading, within the time he then has to plead or within eight days from the delivery of the amendment, whichever shall last expire ; *and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment.*
If he does not plead or amend.

J. A., O. 27, r. 5. Under the old Rule leave to plead or amend was necessary within such time and on such terms as was just. The latter clause is new.

Leave in other cases. 6. In all cases not provided for by the preceding Rules of this Order, application for leave to amend may be made by either party to the Court or a judge or to the judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just.

J. A., O. 27, r. 6. This includes an application for the amendment of the writ. See pp. 82 and 117.

Failure to amend.
Time. 7. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become ipso facto void, unless the time is extended by the Court or a judge.

J. A., O. 27, r. 7.

When to be printed. 8. An *indorsement* or pleading may be amended by written alterations in the *copy* which has been delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making them in writing would render the *document* difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a print of the *document* as amended.

J. A., O. 27, r. 8 ; and see O. 19, r. 9.

Amended documents.
How marked. 9. Whenever any *indorsement* or pleading is amended, the same, when amended, shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz. : " Amended . . . day of

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. *pursuant to order of* dated **Order**
the of " **XXVIII.**
J. A., O. 27, r. 9. See p. 141.

10. Whenever any *indorsement* or pleading is amended, Delivery
such amended *document* shall be delivered to the opposite of.
party within the time allowed for amending the same.

J. A., O. 27, r. 10.

*11. Clerical mistakes in judgments or orders, or errors Clerical
arising therein from any accidental slip or omission, may errors, &c.
at any time be corrected by the Court or a judge on motion
or summons without an appeal.

This Rule, which is most useful, is new. Ch. Fund Rules, 1874, 16.

*12. The Court or a judge may at any time, and on such Errors in
terms as to costs or otherwise as the Court or judge may proceed-
think just, amend any defect or error in any proceedings, ings.
and all necessary amendments shall be made for the pur-
pose of determining the real question or issue raised by or
depending on the proceedings.

This Rule, which is new, is a development of R. 1 and R. 11. Cf.
O. 70.

*13. The costs of and occasioned by any amendment Costs of.
made pursuant to Rules 2 and 3 of this Order shall be
borne by the party making the same, unless the Court or
a judge shall otherwise order.

O. 65, r. 27 (31 and 32). *This Rule also is new.* It merely con-
tains an express direction that what has been hitherto the unwritten
practice shall be unaltered.

*ORDER XXIX.

Order
XXIX.

RELEASES IN ADMIRALTY ACTIONS.

1. Property arrested by warrant shall only be released
under the authority of an instrument issued from the
Registry, to be called a release.

2. A solicitor, at whose instance any property has been
arrested, may, before an appearance has been entered,
obtain the release thereof by filing a notice that he with-
draws the warrant.

3. A solicitor may obtain the release of any property by
paying into the Registry the sum in respect of which the
action has been commenced.

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4. Cargo, arrested for freight only, may be released by filing an affidavit as to the value of the freight, and by paying the amount of the freight into the Registry, or by satisfying the judge that it has already been paid.

5. In an action of salvage, the value of the property under arrest shall be agreed, or an affidavit of value filed, before the property is released, unless the Court or a judge shall otherwise order.

6. A solicitor, who shall have filed a bail bond in the sum in respect of which the action has been commenced, or paid such sum into the Registry, and, if the action be one of salvage, shall have also filed an affidavit as to the value of the property arrested, shall be entitled to a release for the same, unless there be a caveat against the release thereof outstanding in the "Caveat Release Book."

7. The release, when obtained, shall be left with a notice in the Registry by the solicitor taking out the same, who shall also at the same time pay all costs, charges and expenses attending the care and custody of the property whilst under arrest; and the property shall thereupon be released.

8. A solicitor in an action, desiring to prevent the release of any property under arrest, shall file in the Registry a notice, and thereupon a caveat against the release of the property shall be entered in a book to be kept in the Principal Registry, called the "Caveat Release Book."

9. Where an action is proceeding in a District Registry, the District Registrar shall, before authorising a release, ascertain by telegraph, or otherwise, from the Principal Registry, whether or not any caveat has been entered there.

10. A party, delaying the release of any property by the entry of a caveat, shall be liable to be condemned in costs and damages, unless he shall show to the satisfaction of the Court or a judge good and sufficient reason for having so done.

11. A party, desiring to prevent the arrest of any property, may cause a caveat against the issue of a warrant for the arrest thereof to be entered in the Principal Registry.

12. For the purpose in the last preceding Rule mentioned, the party shall cause to be filed in the Registry a notice, signed by himself or his solicitor, undertaking to

RULES OF THE SUPREME COURT.

**Order
XXIX.**

enter an appearance in any action that may be commenced against the said property, and to give bail in such action in a sum not exceeding an amount to be stated in the notice, or pay such sum into the Registry; and a caveat against the issue of a warrant for the arrest of the property shall thereupon be entered in a book to be kept in the Registry, called the "Caveat Warrant Book."

13. Where an action is proceeding in a District Registry, the District Registrar (unless required to act under Rule 18 of this Order) shall, before issuing a warrant for the arrest of the property, ascertain by telegraph, or otherwise, from the Principal Registry, whether or not any caveat has been entered against the issue of a warrant for the arrest thereof.

14. A solicitor, commencing an action against any property in respect of which a caveat has been entered in the "Caveat Warrant Book," shall forthwith serve a copy of the writ upon the party on whose behalf the caveat has been entered, or upon his solicitor.

15. Within three days from the service of the writ or copy thereof, the party on whose behalf the caveat has been entered shall, if the sum in respect of which the action is commenced does not exceed the amount for which he has undertaken, give bail in such sum, or pay the same into the Registry.

16. After the expiration of twelve days from the filing of the notice in Rule 12 mentioned, if the party on whose behalf the caveat has been entered shall not have given bail in such sum, or paid the same into the Registry, the plaintiff's solicitor may proceed with the action by default, and on filing his proofs in the Registry may have the action placed on the list for hearing.

17. If, when the action comes before the judge, he is satisfied that the claim is well founded, he may pronounce for the amount which appears to him to be due, and may enforce the payment thereof by attachment against the party on whose behalf the caveat has been entered, and by the arrest of the property, if it then be or thereafter come within the jurisdiction of the Court.

18. Nothing in this Order shall prevent a solicitor from taking out a warrant for the arrest of any property, notwithstanding the entry of a caveat in the "Caveat Warrant Book;" but the party, at whose instance any property in respect of which a caveat is entered shall be arrested, shall

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be liable to have the warrant discharged and to be condemned in costs and damages, unless he shall show, to the satisfaction of the judge, good and sufficient reason for having so done.

The whole of this Order is new. As it refers only to Admiralty and not to general practice, it is not annotated.

Order XXX.

***ORDER XXX.**

SUMMONS FOR DIRECTIONS.

One may
be taken
out by any
party.
As to what.

*1. In every cause or matter one general summons for directions may be taken out at any time by any party with respect to the following matters and proceedings: particulars of claim defence or reply, statement of special case, discovery (including interrogatories), commissions and examinations of witnesses, mode of trial (including proceedings in lieu of demurrer, trial on motion for judgment and reference), place of trial, and *any other matter or proceeding in the cause or matter previous to trial.*

See Solrs'. J., July 28, 1883, p. 646, as to the general scheme of the summons for directions.

A four day
summons.

On whom
to be
served.

To contain
everything
practic-
able.

Any re-
spondent
may ask
for any
order.

Any order
made on
notice.

*2. Such summons for directions shall be a summons returnable in not less than four days, in the Form No. 3 in Appendix K., with such variations as circumstances may require, and shall be addressed to and served upon all such parties to the cause or matter as may be affected thereby. The applicant *shall*, so far as practicable, include in the summons all or as many of the above-mentioned matters and proceedings as, having regard to the nature of the cause or matter, can conveniently be dealt with by the order and directions of the Court or judge. Upon the hearing of the summons, *any party to whom the summons is addressed* shall be at liberty to apply for any order or directions as to any of the above-mentioned matters or proceedings which he may desire, and thereupon, after giving notice to such parties (if any) as the Court or judge may direct, any order may be made, and all necessary directions given, as to all or any of such matters and proceedings as may be just, whether applied for or not: such order shall be in the Form No. 4 in

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Appendix K., with such variations as circumstances may require. **Order XXX.**

The order referred to appears to go beyond the rule, and impliedly points to many adjournments of this summons. The words "any order on any other matter or proceeding in the cause or matter previous to trial" are very wide.

*3. If, upon any other application *as to any of the above mentioned matters or proceedings*, it shall appear to the Court or judge that the application is one that could and ought to have been included in or made upon the general summons for directions, such application shall be granted only at the costs of the party making the same. **Costs of any other application upon similar matters wrongly omitted.**

This Rule refers to the application of the respondents as well as to that of the party actually taking out the summons for directions. See Allen's Forms of Endorsement. O. 65, r. 11.

ORDER XXXI.

Order XXXI.

DISCOVERY AND INSPECTION.

1. *In any action where relief by way of damages or otherwise is sought on the ground of fraud or breach of trust*, the plaintiff may at any time after delivering his statement of claim, and a defendant may *at or after the time of delivering his defence*, without any order for that purpose, and in every other cause or matter the plaintiff or defendant may by leave of the Court or a judge, deliver interrogatories in writing for the examination of the opposite parties, or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: *Provided also that interrogatories which do not relate to any matters in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.* **Interrogatories. Time for When leave necessary. See p. 162. What they may contain. See p. 185.**

J. A., O. 31, rr. 1 and 5. See p. 179.

(1) Leave is now necessary in all actions, except for fraud or breach of trust, and (2) irrelevant interrogatories are to be excluded altogether. As to what are irrelevant, reported cases can alone give a correct line to. Cf. C. L. P. Act, 1854, ss. 51 and 52. The Rule is most important.

RULES OF THE SUPREME COURT.

- Order.**
XXXI.
- Applica-
tion for
leave, how
con-
sidered.** *2. In deciding upon any application for leave to exhibit interrogatories, the Court or judge shall take into account any offer which may be made by the party sought to be interrogated, to deliver particulars, or to make admissions, or to produce documents relating to the matter in question, or any of them.
- By the judicious use of this Rule a party may often get the application of his opponent to exhibit interrogatories refused.
- Costs of
improper.** 3. In adjusting the costs of the *cause or matter* inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court or judge, *either with or without an application for inquiry*, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid *in any event* by the party in fault.
- J. A., O. 31, r. 2; cf. Costs, r. 13. O. 65, r. 11.
- Form.** 4. Interrogatories shall be in the Form No. 6 in Appendix B., with such variations as circumstances may require.
- Corpora-
tions and
companies.** 5. If any party to a *cause or matter* be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.
- J. A., O. 31, r. 4; C. L. P. Act, 1854, s. 51. See pp. 173, 175, and *Mayor of Swansea v. Quick*, 5 C. P. D. 106. See Morgan, p. 515.
- Objection
to indi-
vidual.** 6. Any objection to answering any one or more of several interrogatories on the ground that it or they is or are scandalous or irrelevant, or not *bonâ fide* for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.
- J. A., O. 31, r. 5a; see p. 195.
- Setting
aside.** 7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are *prolix*, *oppressive*, *unnecessary*, or scandalous; and any applica-
- Time of**

RULES OF THE SUPREME COURT.

tion for this purpose may be made within *seven* days after service of the interrogatories.

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XXXI.**

J. A., O. 31, r. 5a. Not the propriety of the question but the sufficiency of the answer is the question to be decided.

**applica-
tion.**

8. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as a judge may allow.

**Answer.
Time.**

J. A., O. 31, r. 6. The filing of an answer cannot be delayed until its costs are paid.

9. An affidavit in answer to interrogatories shall, unless otherwise ordered by a judge, if exceeding ten folios, be printed and shall be in the Form No. 7 in Appendix B. with such variations as circumstances may require.

Printing.

J. A., O. 31, r. 7. See O. 66.

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court or a judge on motion or summons.

**Sufficiency
how de-
termined.**

J. A., O. 31, r. 9 ; see p. 186.

11. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by vivâ voce examination, as the judge may direct.

**Order for
answer or
further
answer.
How.**

J. A., O. 31, r. 10. See C. L. P. Act, 1854, s. 53.

12. Any party may, without filing any affidavit, apply to the Court or a judge for an order directing any other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. *On the hearing of such application the Court or judge may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the cause or matter, or make such order, either generally or limited to certain classes of documents, as may, in their or his discretion, be thought fit.

**Discovery,
order for.**

***On General or
limited.**

The latter part of this Rule is new. J. A., O. 31, r. 12.

13. The affidavit, to be made by a party against whom such order as is mentioned in the last preceding Rule has been made, shall specify which, if any, of the documents therein mentioned he objects to produce, and it shall be

**Affidavit
as to docu-
ments.**

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in the Form No. 8 in Appendix B., with such variations as circumstances may require.

J. A., O. 31, r. 13. See p. 176. As to costs of prolix affidavit, *Walker v. Poole*, 21 Ch. D. 835.

Order for produc- tion.

14. It shall be lawful for the Court or a judge, at any time during the pendency of any cause or matter, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such cause or matter, as the Court or judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

J. A., O. 31, r. 11. This Rule dealt first with the disclosure by the party of his documents, and, secondly, with the way to make him show them afterwards.

Inspection of docu- ments re- ferred to in pleadings.

15. Every party to a *cause or matter* shall be entitled, at any time, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such cause or matter, unless he shall satisfy the Court or a judge that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or *excuse* which the Court or judge shall deem sufficient for not complying with such notice: *in which case the Court or judge may allow the same to be put in evidence on such terms as to costs and otherwise as the Court or judge shall think fit.

J. A., O. 31, r. 14. *The latter clause is new.* See *Webster v. Whewell*, 15 Ch. D. 120. See p. 168.

Form.

16. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the Form No. 9 in Appendix B., with such variations as circumstances may require.

J. A., O. 31, r. 15. See Appendix B.

Inspec- on. Time.

17. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 13, or if any of

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the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, *or in the case of bankers' books or other books of account, or books in constant use for the purposes of any trade or business, at their usual place of custody*, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in the Form No. 10 in Appendix B., with such variations as circumstances may require.

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XXXV.**

See p. 189.

J. A., O. 31, r. 16. *Brown v. Sewell*, 16 Ch. D. 517, C. A.

18. If the party served with notice under Rule 17 Order for. omits to give such notice of a time for inspection or objects to give inspection, or *offers inspection elsewhere than at the office of his solicitor*, the judge may, on the application of the party desiring it, make an order for inspection *in such place and in such manner as he may think fit*; *and, except in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party.

J. A., O. 31, r. 17. *The latter part of the Rule is new.*

*19. An order upon the lord of a manor to allow To lord as limited inspection of the Court rolls may be made on the application of a copyhold tenant supported by an affidavit to copy-holds. that he has applied for inspection, and that the same has been refused.

This is new.

20. If the party from whom discovery of any kind or Discretion inspection is sought objects to the same, or any part of Court as thereof, the Court or a judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the *cause or matter*, or that for any other reason it is desirable that any issue or question in dispute in the cause or to time of.

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matter should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

J. A., O. 31, r. 19. See *Parker v. Wells*, 18 Ch. D. 477, and see p. 169.

Attach- ment.

Dismissal of action, &c.

21. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating may apply to the Court or a judge for an order to that effect, and an order may be made accordingly.

J. A., O. 31, r. 20. See p. 179. O. 44.

Even when order served only on solici- tor.

22. Service of an order for *interrogatories* or discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

J. A., O. 31, r. 21. See p. 179.

Liability of solicitor.

23. A solicitor, upon whom an order against any party for interrogatories or discovery or inspection is served under the last preceding Rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment.

J. A., O. 31, r. 22. O. 42, rr. 4, 6 and 7.

Answer or part of answer at trial.

24. Any party may, at the trial of a *cause, matter*, or issue, use in evidence any one or more of the answers or *any part of an answer* of the opposite party to interrogatories without putting in the others *or the whole of such answer*: Provided always, that in such case the judge may look at the whole of the answers, and if he shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in.

J. A., O. 31, r. 23.

RULES OF THE SUPREME COURT.

25. In every cause, or matter, the costs of discovery, by interrogatories or otherwise, shall, unless otherwise ordered by the Court or a judge, be secured in the first instance as provided by Rule 26 of this Order, by the party seeking such discovery, and shall be allowed as part of his costs where, and only where, such discovery shall appear to the judge at the trial, or, if there is no trial, to the Court or a judge, or shall appear to the taxing officer, to have been reasonably asked for.

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XXXI.**

Costs of.
By whom
to be first
borne.

This is new. Cf. Costs, r. 18. See Rule 26.

*26. Any party seeking discovery by interrogatories shall, before delivery of interrogatories, pay into Court to a separate account in the action, to be called "Security for Costs Account," to abide further order, the sum of £5, and, if the number of folios exceeds five, the further sum of 10s. for every additional folio. Any party seeking discovery otherwise than by interrogatories shall, before making application for discovery, pay into Court, to a like account, to abide further order, the sum of £5, and may be ordered further to pay into Court as aforesaid such additional sum as the Court or a judge shall direct. The party seeking discovery shall, with his interrogatories or order for discovery, serve a copy of the receipt for the said payment into Court, and the time for answering or making discovery shall in all cases commence from the date of such service. The party from whom discovery is sought shall not be required to answer or make discovery unless and until the said payment has been made.

Costs.

*27. Unless the Court or a judge shall at or before the trial otherwise order, the amount standing to the credit of the "Security for Costs Account" in any cause or matter, shall after the cause or matter has been finally disposed of be paid out to the party by whom the same was paid in on his request, or to his solicitor on such party's written authority, in the event of the costs of the cause or matter being adjudged to him, but, in the event of the Court or judge ordering him to pay the costs of the cause or matter, the amount in Court shall be subject to a lien for the costs ordered to be paid to any other party.

Payment
out.

A direction from the judge should be asked for at the trial as to this.

*28. In any action against or by a sheriff in respect of any matters connected with the execution of his office, the Court or a judge may, on the application of either

Discovery
by sheriff.

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party, order that the affidavit to be made in answer either to interrogatories or to an order for discovery shall be made by the officer actually concerned.

See p. 180.

Order XXXII.

ORDER XXXII.

ADMISSIONS.

As to other
party's
case by
pleading
or in
writing

1. Any party to a *cause or matter* may give notice, by his *pleading, or otherwise in writing*, that he admits the truth of the whole or any part of the case of any other party.

J. A., O. 82, r. 1. As to judgment on, see r. 6. *Lumsden v. Winter*, 8 Q. B. D. 650. *Clive v. Carew*, 1 J. & H. 207.

Notice to
admit
docu-
ments.
Costs of
proof.

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the cause or matter may be, unless at the trial or hearing the Court or a judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

J. A., O. 82, r. 2.

Form.

3. A notice to admit documents shall be in the Form No. 11 in Appendix B., with such variations as circumstances may require.

J. A., O. 82, r. 3.

Notice to
admit
specific
facts.
Time of.

*4. Any party may, by notice in writing, at any time not later than nine days before the day for which notice of trial has been given, call on any other party to admit, for the purposes of the cause, matter, or issue *only*, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court or a judge, the costs of proving such fact or facts shall be paid by the party so

Costs of
proving

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neglecting or refusing, whatever the result of the cause, matter, or issue may be, unless at the trial or hearing the Court or a judge certify that the refusal to admit was reasonable, or unless the Court or a judge shall at any time otherwise order or direct. Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular cause, matter, or issue, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: provided also, that the Court or a judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

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XXXII.**

facts not
admitted.
Admis-
sions for
purpose
of matter
only.

With-
drawal.

This Rule carries into effect the report of the Jud. Commission, p. 14, and is an extension of r. 2.

*5. A notice to admit facts shall be in the Form No. 12 in Appendix B., and admissions of facts shall be in the Form No. 13 in Appendix B., with such variations as circumstances may require.

These forms should be referred to as showing how carefully the admissions are guarded in applying only to the particular action.

6. Any party may at any stage of a cause or matter where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court or a judge for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the Court or a judge may upon such application make such order or give such judgment as the Court or judge may think just.

Summary
relief on.

J. A., O. 40, r. 11, under which the application was by motion. It is a matter for discretion whether judgment will be ordered: *Mellor v. Sidebottom*, 5 Ch. D. 342.

7. An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof be required.

Evidence
of signa-
ture.

J. A., O. 32, r. 4.

*8. Notice to produce documents shall be in the Form No. 14 in Appendix B., with such variations as circumstances may require. An affidavit of the solicitor, or his clerk, of the service of any notice to produce, and of the

Form.

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time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

Costs.

*9. If a notice to admit or produce comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

As to a similar fault in the affidavit of documents punished in the same way, see *Walker v. Poole*, 21 Ch. D. 835.

Order XXXIII.

ORDER XXXIII.

ISSUES, INQUIRIES, AND ACCOUNTS.

Issues may
be ordered
to be
settled.

1. Where in any *cause or matter* it appears to the *Court* or a judge that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues, and such issues shall, if the parties differ, be settled by the Court or a judge.

J. A., O. 26, in which reference was made to the pleadings not defining the issues sufficiently.

Inquiries
or accounts,
when
directed.

2. The Court or a judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

J. A., O. 33. *Rumsey v. Reade*, 1 Ch. D. 643.

Special
directions
by Court
or judge as
to mode of
taking.

3. The Court or a judge may, either by the judgment or order directing an account to be taken or by any subsequent order, give special directions with regard to the mode in which the account is to be taken or vouched, and in particular may direct that in taking the account, the books of account in which the accounts in question have been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

Chan. Pro. Act, 1852, s. 54. *Stainton v. Carron Co.*, 24 Beav. 346; *Sleight v. Larson*, 3 K. & J. 292.

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4. Where any account is directed to be taken, the accounting party, unless the Court or a judge shall otherwise direct, shall make out his account and verify the same by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit and be left in the judge's chambers, or *with the official or other referee*, as the case may be.

Order
XXXIII.

To be verified by affidavit numbered. Where left.

Cons. O. 35, r. 33. He can be cross-examined thereon : Morgan Ch. Pr., p. 127, ed. 5.

5. Any party seeking to charge any accounting party beyond what he has by his account admitted to have received shall give notice thereof to the accounting party, stating, so far as he is able, the amount sought to be charged and the particulars thereof in a short and succinct manner.

Notice of surcharge.

Cons. O. 35, r. 34. *McArthur v. Dudgeon*, L. R. 15 Eq. 102.

6. Every *judgment* or order for a general account of the personal estate of a testator or intestate shall contain a direction for an inquiry what parts (if any) of such personal estate are outstanding or undisposed of, unless the Court or a judge shall otherwise direct.

Direction as to inquiry as to personal estate.

Cons. O. 23, r. 14.

7. Where by any *judgment* or order, whether made in Court or in chambers, any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered, so that, as far as may be, each distinct account and inquiry may be designated by a number, and such judgment or order shall be in the Form No. 28 in Appendix L., with such variations as the circumstances of the case may require.

Accounts and inquiries to be kept separate. Form.

Cons. O. 23, r. 15.

8. In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose.

Just allowances.

Cons. O. 23, r. 16.

9. If it shall appear to the Court or a judge, on the representation of any chief clerk or otherwise, that there is any undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the Court or judge may require the party having the conduct of the proceedings, or any other party, to explain the delay, and may thereupon make such order with regard to expediting the proceedings or the conduct

Delay.

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thereof, or the stay thereof, and as to the costs of the proceedings, as the circumstances of the case may require; and for the purposes aforesaid, any party or the official solicitor may be directed to summon the persons whose attendance is required, and to conduct any proceedings and carry out any directions which may be given; and any costs of the official solicitor shall be paid by such parties or out of such funds as the Court or judge may direct; and if any such costs be not otherwise paid, the same shall be paid out of such moneys (if any) as may be provided by Parliament.

Compare Cona. O. 35, r. 23. *Hales v. Morris*, *Times*, Dec. 23, 1882.

Order XXXIV.

ORDER XXXIV.

I. SPECIAL CASE.

Consent
necessary
for.
What it
must con-
tain.

Powers of
Court.

1. The parties to any cause or matter may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

J. A., O. 34, r. 1, which made this possible only after the issue of the writ of summons.

It must be upon a real state of facts: *Republic of Bolivia v. Bolivian Navigation Co.*, 24 W. R. 361.

Compul-
sory state-
ment of a
question of
law.

2. If it appear to the Court or a judge that there is in any *cause or matter* a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the Court or judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as

RULES OF THE SUPREME COURT.

the Court or judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

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J. A., O. 34, r. 2. In this Rule it need not have appeared from the pleadings.

3. Every special case shall be printed by the plaintiff, and signed by the several parties or their counsel or solicitors, and shall be filed by the plaintiff. Printed copies for the use of the judges shall be delivered by the plaintiff. Printing.

J. A., O. 34, r. 3. See O. 66.

4. No special case in *any cause or matter* to which a married woman, (*not being a party thereto in respect of her separate property or of any separate right of action by or against her,*) infant, or person of unsound mind *not so found by inquisition* is a party, shall be set down for argument without leave of the Court or a judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true. Persons under disability.

J. A., O. 34, r. 4. *Atty v. Etough*, L. R. 13 Eq. 462.

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No. 25 in *Appendix G.*, and also if any married woman, infant, or person of unsound mind *not so found by inquisition* be a party to the cause or matter, producing a copy of the order giving leave to enter the same for argument. Memo of entry.

J. A., O. 34, r. 5. See p. 228.

6. The parties to a special case may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, that, on the judgment of the Court being given in the affirmative or negative of the questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the *cause or matter*; and the judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution Agreement for payment according to result of.

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may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal.

J. A., O. 34, r. 6. Otherwise judgment must be moved for upon the findings of the Court: *Harrison v. Cornwall Minerals Ry. Co.*, 16 Ch. D. 66.

What
O. 34
applies to.

7. This Order shall apply to every special case stated in a cause or matter, or in any proceeding incidental thereto.

J. A., O. 34, r. 7, went on to provide that no special case was in future to be stated under 13 & 14 Vict. c. 35, under which they were stated in Chancery.

As under
13 & 14
Vict. c. 35.

*8. Any special case may hereafter be stated, for the same purposes and in the same manner as was provided by the Act 13 & 14 Vict. c. 35, and the same shall be deemed to be a special case stated in a matter within the meaning of this Order.

See note to Rule 7. See p. 228. See, too, O. 36, r. 52, as to statement of case by referee.

II. ISSUES OF FACT WITHOUT PLEADINGS.

Trial of
issues of
fact by
consent
and order.

*9. When the parties to a cause or matter are agreed as to the questions of fact to be decided between them, they may, after writ issued and before judgment, by consent and order of the Court or a judge, proceed to the trial of any such questions of fact without formal pleadings; and such questions may be stated for trial in an issue in the Form No. 15 in Appendix B., with such variations as circumstances may require, and such issue may be entered for trial and tried in the same manner as any issue joined in an ordinary action, and the proceedings shall be under the control and jurisdiction of the Court or judge, in the same way as the proceedings in an action.

In Common Law Courts there was no power as of right to draw inferences of fact, and so the power to do so was specially inserted in the special case.

By consent
fixed sum
may be
paid.

*10. The Court or a judge may by consent of the parties order that, upon the finding in the affirmative or negative of such issue as in the last preceding Rule mentioned, a sum of money, fixed by the parties, or to be ascertained upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them either with or without the costs of the cause or matter.

This is a development of B. 6.

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11. Upon the finding on any such issue, as in Rule 9 mentioned, judgment may be entered for the sum so agreed or ascertained as aforesaid, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the Court or a judge shall otherwise order for the purpose of giving either party an opportunity for moving to set aside the finding or for a new trial.

**Order
XXXIV.**

Judgment
and execu-
tion on.

New
trials.

*12. The proceedings upon such issue, as in Rule 9 mentioned, may be recorded at the instance of either party, and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action.

Effect of
judgment.

See Rule 9.

ORDER XXXV.

**Order
XXXV.**

PROCEEDINGS IN DISTRICT REGISTRIES.

1. Where a *cause or matter* is proceeding in a District Registry, all proceedings, except where by these Rules it is otherwise provided, or the Court or a judge shall otherwise order, shall be taken in the District Registry, down to and including *the entry* of final judgment, and every final judgment and every order for an account, by reason of the default of the defendant, or by consent, shall be entered in the District Registry in the proper book, in the same manner as a like judgment or order in an action proceeding in London would be entered in the *Central Office*.

Judgment
order for
account.

J. A., O. 35, r. 1a. See p. 89. As to accounts, In *re Smith, Hutchinson v. Ward*, 6 Ch. D. 692. As to Chancery proceedings in, see R. 21. See pp. 102 and 104.

2. Where the writ of summons issues out of a District Registry, and the plaintiff is entitled to enter interlocutory judgment under any of the Rules of Order 13, or where *the cause or matter* is proceeding in the District Registry and the plaintiff is entitled to enter interlocutory judgment under any of the Rules of Order 27, in either case such interlocutory judgment, and when damages shall have been assessed final judgment, shall be

Applica-
tion of
O. 13, or
O. 27.

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Order XXXV. entered in the District Registry, unless the Court or a judge shall otherwise order.

J. A., O. 35, r. 1a. As to issue of writ from, see O. 5, rr. 1—4. As to appearance in, see O. 12, rr. 4—11.

Orders entered in London.

3. Where *a cause or matter* is proceeding in a District Registry, and the judgment or any other order therein is directed to be entered in the Central Office, the same shall be so entered, and an office copy of every such judgment or order shall be transmitted to the District Registry to be filed with the proceedings in the action.

J. A., O. 35, r. 2, which contained an exception.

Execution from.

4. Where *a cause or matter* is proceeding in a District Registry all writs of execution for enforcing any judgment or order therein, *and all summonses under the Debtors Act, 1869*, shall issue from the District Registry, unless the Court or a judge shall otherwise direct. Where final judgment is entered in the District Registry, costs shall be taxed in such Registry unless the Court or a judge shall otherwise order.

J. A., O. 35, r. 3. See O. 54, r. 19.

Proceedings incidental to judgment.

5. Where *a cause or matter* is proceeding in a District Registry, all proceedings relating to the following matters, namely:—

(a.) *Leave to enter judgments under Order 16, Rules 50 and 51;*

(b.) *Leave to issue or renew writs of execution:*

(c.) *Examination of judgment debtors for garnishee purposes, or under Order 42, Rule 32;*

(d.) *Garnishee orders;*

(e.) *Charging orders nisi;*

shall, unless the Court or a judge shall otherwise order, be taken in the District Registry.

J. A., O. 35, r. 3a. Rules, April 11, 1880, with additions.

Jurisdiction of.

6. Where *a cause or matter* is proceeding in a District Registry the District Registrar may exercise all such authority and jurisdiction in respect thereof as may be exercised by a judge at chambers, except such as by these Rules a Master is precluded from exercising.

J. A., O. 35, r. 4. See O. 54, rr. 12 and 19. *Meek v. Michaelson*, W. N. 1876, 111.

Applica-

7. Every application to a District Registrar shall be

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made in the same manner in which applications at chambers are directed to be made by these Rules.

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J. A., O. 35, r. 5. See O. 54. See Morgan, p. 536.

8. If any matter appears to the District Registrar proper for the decision of a judge, the Registrar may refer the same to a judge, and the judge may either dispose of the matter or refer the same back to the Registrar with such directions as he may think fit.

tions to.
Method.
Reference
to judge.

J. A., O. 35, r. 6. Cf. O. 54, r. 20.

9. Any person affected by any order, *finding*, or decision of a District Registrar may appeal to a judge. Such appeal may be made notwithstanding that the order or decision was in respect of a proceeding or matter as to which the District Registrar had jurisdiction only by consent. Such appeal shall be *by way of indorsement on the summons by the Registrar at the request of any party, or by notice in writing to attend before the judge without a fresh summons within six days after the party complaining has notice of the order, finding, or decision complained of, or such further time as may be allowed by a judge or the Registrar.*

Appeal
from Regi-
strar.

Jurisdic-
tion by
consent.

J. A., O. 35, r. 7. This Rule alters the method of appeal. Cf. O. 54, r. 21.

10. An appeal from a District Registrar shall be no stay of proceedings unless so ordered by a judge or the Registrar.

Appeal no
stay of
proceed-
ings.

J. A., O. 35, r. 8. Cf. O. 54, r. 22.

11. Every District Registrar and other officer of a District Registry shall be subject to the orders and directions of the Court or a judge, as fully as any other officer of the Court, and every proceeding in a District Registry shall be subject to the control of the Court or a judge, as fully as a like proceeding in London.

Registrar
under con-
trol of
Court.

J. A., O. 35, r. 9.

12. Every reference to a judge by or appeal to a judge from a District Registrar in any *cause or matter* in the Chancery Division shall be to the judge to whom the *cause or matter* is assigned.

Reference
to judge in,
in Chan-
cery Divi-
sion.

J. A., O. 35, r. 10. See also O. 54, r. 25 et seq.

13. In any action which would, under the foregoing Rules, proceed in the District Registry, the action may, Removal of action.

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**Order
XXXV.**

subject to Rule 14, be removed from the District Registry as of right in the cases and within the times following:—

- (1.) Where the writ is specially indorsed under Order 3, Rule 6, and the plaintiff does not within four days after the appearance of such defendant give notice of an application for an order against him under Order 14; then such defendant may remove the action as of right at any time after the expiration of such four days, and before delivering a defence, and before the expiration of the time for doing so:
- (2.) Where the writ is specially indorsed and the plaintiff has made such application as in the last paragraph mentioned, and the defendant has obtained leave to defend in manner provided by Order 14; then such defendant may remove the action as of right at any time after the order giving him leave to defend, and before delivering a defence and before the expiration of the time for doing so:
- (3.) Where the writ is not specially indorsed *under Order 3, Rule 6*, any defendant may remove the action as of right at any time after appearance, and before delivering a defence, and before the expiration of the time for doing so.

J. A., O. 35, r. 11.

- (4.) In an Admiralty action in rem, any person who may have duly intervened and appeared may remove an action from a District Registry as of right.

J. A., O. 35, r. 11a.

**Removal
by notice.**

14. Any *party or person* desirous to remove an action as of right under the last preceding Rule may do so by serving upon the other parties to the action, and delivering to the District Registrar, a notice, signed by himself or his solicitor, to the effect that he desires the action to be removed to London, and the action shall be removed accordingly: Provided, that if the Court or a judge shall be satisfied that the defendant giving such notice is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, *or that there is other good cause for proceeding in the District Registry*, such

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Court or judge may order that the action may proceed in the District Registry notwithstanding such notice.

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J. A., O. 35, r. 12.

15. Except in Admiralty actions in rem, the notice for removal shall be accompanied by a certificate signed by the defendant or his solicitor that his defence has not been delivered, and that the time for delivering the same has not expired. **Certificate of non-delivery of defence.**

16. In any case not provided for by Rules 13 and 14, any party to a *cause or matter* proceeding in a District Registry may apply to the Court or a judge, or to the District Registrar, for an order to remove the *cause or matter* from the District Registry to London, and the Court, judge, or Registrar may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall be just. **Removal by order.**

J. A., O. 35, r. 13.

17. Any party to a *cause or matter* proceeding in London may apply to the Court or a judge for an order to remove the *cause or matter* from London to any District Registry, and the Court or judge may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall be just.

J. A., O. 35, r. 14.

18. Where, under the preceding Rules of this Order, a *cause or matter* is removed from a District Registry, the defendant shall, upon such removal, give notice to the plaintiff of an address for service in London, in all respects as if the appearance had been originally entered in London. **Address for service in London.**

O. 4.

19. Where a *cause or matter* is proceeding in a District Registry all pleadings and other documents required to be filed shall be filed in the District Registry. **Filing.**

J. A., O. 19, r. 29. O. 38, r. 10.

20. Whenever a *defendant* appears in London to a writ issued out of a District Registry or any proceedings are removed from the District Registry to London, by notice under Rule 14 of this Order, or by order of the Court or a judge, the District Registrar shall transmit to the Central Office all original documents (if any) filed in the District Registry, and a copy of all entries of the proceedings in the books of the District Registry. **Transmission of documents on removal.**

J. A., O. 35, r. 14.

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Trans-
mission of
office
copies to
District
Registry.

*21. When a cause or matter in the Chancery Division is proceeding in a District Registry, all certificates of the Chief Clerk and taxing officers and other documents (required to be filed) used in London before the judge in chambers, or before any taxing officer or referee, and not already filed in the District Registry, shall be filed in the same office as they would have been filed in if the proceedings had originally commenced in London; and if the Court or judge shall so direct, office copies thereof shall be transmitted to the District Registry.

22. No affidavit or record of the Court shall be taken out of a District Registry (except upon removal of the proceedings to London) without the order of a judge or of the District Registrar, and no subpoena for the production of any such document shall be issued.

J. A., 1873, a. 65.

Registrar
accounting
to Treas-
ury.

23. Every District Registrar shall account for and pay over to the Treasury all moneys paid into Court at the Registry of which he is Registrar, in such manner and at such times as may be from time to time directed by the Treasury.

J. A., O. 35, r. 15.

Forms.

24. The forms contained in the Appendices shall, as far as they are applicable, be used in or for the purposes of District Registries, with such variations as circumstances may require.

J. A., O. 35, r. 16.

Order XXXVI

ORDER XXXVI.

TRIAL.

I. Place.

Place of
trial.

1. There shall be no local venue for the trial of any action, *except where otherwise provided by statute*. Every action in every Division shall, unless the Court or a judge otherwise orders, be tried in the county or place named on the statement of claim, or (where no statement of claim has been delivered or required) by a notice in writing to be served on the defendant, or his solicitor, within six days after appearance. Where no place of trial is named, the place of trial shall, unless the Court or a judge shall otherwise order, be the county of Middlesex.

J. A., O. 36, r. 1. *Redmayne v. Vaughan*, 24 W. R. 983.

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II. Mode of Trial.

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2. *In actions of slander, libel, false imprisonment, malicious prosecution, seduction, or breach of promise of marriage, the plaintiff may, in his notice of trial to be given as hereinafter provided, and the defendant may, upon giving notice within four days from the time of the service of notice of trial or within such extended time as the Court or a judge may allow, or in the notice of trial to be given by him as hereinafter provided, signify his desire to have the issues of fact tried by a judge with a jury, and thereupon the same shall be so tried.* Jury.

J. A., O. 36, r. 3. See Wilson, 3 ed., p. 320.

*3. Causes or matters assigned by the Principal Act to the Chancery Division shall be tried by a judge without a jury, unless the Court or a judge shall otherwise order. No jury in
Chancery
Division.

See p. 219.

4. The Court or a judge may, if it shall appear desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which previously to the passing of the Principal Act could, without any consent of parties, have been tried without a jury. Court may
direct trial
without a
jury.

J. A., O. 36, r. 26. See p. 220, as to discretion of judge.

*5. The Court or a judge may direct the trial without a jury of any cause, matter, or issue requiring any prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in their or his opinion conveniently be made with a jury. Scientific
investiga-
tions, &c.

See pp. 219 and 220. J. A., 73, s. 57. *Ward v. Pilley*, 5 Q. B. D. 427.

6. In any other cause or matter, upon the application of any party thereto for a trial with a jury of the cause or matter or any issue of fact, an order shall be made for a trial with a jury. When trial
with jury
ordered.

Cons. O. 41, r. 26.

*7. (a.) In every cause or matter, unless under the provisions of Rule 6 of this Order a trial with a jury is ordered, or under Rule 2 of this Order either party has signified a desire to have a trial with a jury, the mode of trial shall be by a judge without a jury; provided that in any such case the Court or a judge may at any time order any cause, matter, or issue to be tried by a judge with a trial. Trial
generally
by judge
without
jury.
Order as to
mode of
trial.

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Order XXXVI.

**Right of
plaintiff to
special
jury.**

**Right of
defendant
to special
jury.**

**C. L. P.
Act, 1852,
ss. 112,
113.**

**Order for
special
jury.**

**Trial of
different
questions
in different
modes.**

Place.

**Trial
generally
by single
judge with
jury.**

jury, or by a judge sitting with assessors, or by an official referee or special referee with or without assessors :

(b.) The plaintiff in any cause or matter in which he is entitled to a jury may have the issues tried by a special jury, upon giving notice in writing to that effect to the defendant at the time when he gives notice of trial :

(c.) The defendant, in any cause or matter in which he is entitled to a jury, may have the issues tried by a special jury, on giving notice in writing to that effect at any time after the close of the pleadings or settlement of the issues and before notice of trial, or if notice of trial has been given, then not less than six clear days before the day for which notice of trial has been given :

(d.) Provided that a judge may at any time make an order for a special jury upon such terms, if any, as to costs and otherwise as may be just.

J. A., O. 36, r. 8.

8. Subject to the provisions of the preceding Rules of *this Order*, the Court or a judge may, in any cause or matter, at any time or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the places for such trials, and in all cases may order that one or more issues of fact be tried before any other or others.

J. A., O. 36, r. 6. See p. 139.

9. Every trial of any question or issue of fact with a jury shall be by a single judge, unless such trial be specially ordered to be by two or more judges.

J. A., O. 36, r. 7. Cf. Rule 3.

*10. Nothing in this Order shall affect any proceedings under any of the provisions of the Common Law Procedure Acts relating to arbitration.

C. L. P. Act, 1854, ss. 3 et seq.

III. Notice and Entry of Trial.

**Notice of
trial by
plaintiff.**

See R. 15.

**Notice of
trial by
defendant.**

*11. Notice of trial may be given in any cause or matter by the plaintiff or other party in the position of plaintiff. Such notice may be given with the reply (if any) whether it closes the pleadings or not, or at any time after the issues of fact are ready for trial.

Cf. J. A., O. 36, r. 3.

12. If the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as

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the Court or a judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, or may apply to the Court or judge to dismiss the action for want of prosecution ; and on the hearing of such application, the Court or a judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the Court or judge may seem just.

**Order
XXXVI.**

Application to dis-
miss for
want of
prosecu-
tion.

J. A., O. 36, rr. 4, 4a, p. 220.

13. Notice of trial shall state whether it is for the trial of the *cause or matter* or of issues therein ; and in actions in the Queen's Bench Division the place and day for which it is to be entered for trial. It shall be in the Form No. 16 in Appendix B., with such variations as circumstances may require.

Form of
notice of
trial.

J. A., O. 36, r. 8. *Harris v. Gamble*, 7 Ch. D. 877.

14. Ten days' notice of trial shall be given, unless the party to whom it is given has consented, *or is under terms or has been ordered* to take short notice of trial ; and shall be sufficient in all cases, unless otherwise ordered by the Court or a judge. Short notice of trial shall be four days' notice, *unless otherwise ordered*.

Length of
notice.

J. A., O. 36, r. 9. For method of counting days, see O. 64, r. 12.

15. Notice of trial shall be given before entering the trial : *and the trial may be entered notwithstanding that the pleadings are not closed provided that notice of trial has been given*.

Notice
must be
given.

J. A. O. 36, r. 10. See R. 11.

16. In London and Middlesex, unless within six days after notice of trial is given the trial shall be entered by one party or the other, the notice of trial shall be no longer in force.

Expiry of
notice.

J. A., O. 36, r. 10a.

17. Notice of trial for London or Middlesex shall not be or operate as for any particular sittings ; but shall be deemed to be for any day after the expiration of the notice on which the *trial* may come on in its order upon the list.

In London
or Middle-
sex.

J. A., O. 36, r. 11. See O. 63 and O. 64.

18. Notice of trial elsewhere than in London or Middlesex shall be deemed to be for the first day of the then next assizes at the place for which notice of trial is given.

At assizes.

J. A., O. 36, r. 12. J. A., 1873, s. 29.

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Order XXXVI.	19. No notice of trial shall be countermanded except by consent, or by leave of the Court or a judge, which leave may be given subject to such terms as to costs, or otherwise, as may be just. J. A., O. 36, r. 13. See p. 221, and Wilson, p. 271.
Countermand of notice.	
Omission to enter for trial.	20. If the party giving notice of trial for London or Middlesex omits to enter the trial on the day or day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last preceding Rule, within four days enter the trial. J. A., O. 36, r. 14.
Request that cause may be set down for further consideration.	*21. When any cause or matter in the Chancery Division shall have been adjourned for further consideration, the same may, after the expiration of eight days, and within fourteen days from the filing of the Chief Clerk's certificate, be set down by the Registrar in the Cause Book for further consideration, on the written request of the solicitor for the plaintiff or party having the conduct of the proceedings, and after the expiration of such fourteen days the cause or matter may be set down by the Registrar on the written request of the solicitor for the plaintiff or for any other party; <i>and in either case, upon production of the judgment or order adjourning further consideration, or an office copy thereof, and an office copy of the Chief Clerk's certificate or a memorandum of the date when the certificate was filed, indorsed on the request by the proper officer. The request may be in the Form No. 26 in Appendix L.</i> The cause or matter when so set down shall not be put into the paper for further consideration until after the expiration of ten days from the day on which the same was so set down, and shall be marked in the Cause Book accordingly. Notice thereof shall be given to the other parties in the action at least six days before the day for which the same may be so marked for further consideration. Such notice may be in the Form No. 27 in Appendix L. Cons. O. 21, r. 10.

IV. Entry in District Registry.

Time.	22. After notice of trial has been given of any action or issue to be tried elsewhere than in London or Middlesex, either party may at any time before the day next before the Commission day enter the trial at the next
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assizes in the District Registry (if any) of the city or town where the trial is to be had, or with the Associate at the assize town as heretofore. Order XXXVI.

J. A., O. 36, r. 15a.

23. So long as there is no District Registry in the Place. places enumerated in the first of the following columns, entries for trial may be made in the District Registries in the second of the following columns, i.e., trials at—

Bodmin	{ may be entered in the	{ Truro.
	{ District Registry at	{
Carnarvon	" "	Bangor.
Chelmsford	" "	Colchester.
Lancaster	" "	Preston.
Lewes .	" "	Brighton.
Monmouth	" "	{ Newport,
		{ Monmouthshire.
Stafford .	" "	Hanley.
Wells .	" "	Bridgwater.
Warwick	" "	Birmingham.
Winchester	" "	Southampton.

J. A., O. 36, r. 15a.

24. The District Registrars shall provide *two numbered* lists for trials with juries and trials without juries respectively. The entry shall be made in the proper list in *Mode of* such vacant number as the party entering shall select, *entry.* and the lists shall be open for the inspection of all parties interested therein at all times during office hours. At the time of entry two copies of the documents mentioned in Rule 30 of this Order shall be delivered as directed by the said Rule, one of which shall be duly stamped with the amount of the fee payable on entry of the action or issue for trial.

J. A., O. 36, r. 15a.

25. When a trial which has been entered has been *Trial post-* postponed or withdrawn under Order 26, Rule 2, or *poned, &c.* settled, the party who made the entry shall immediately thereupon give notice thereof to the District Registrar, and such entry shall be expunged from the list.

O. 36, r. 15a.

26. The District Registrar shall close the lists and trans- *Transmis-* mit a corrected copy of the said lists, together with the *sion of* copy of

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Order XXXVI. two copies of the *documents above referred to*, to the Associate at the assize town in such time that the same may be received at his office before the opening of the Commission.

lists and documents to the Associate.

O. 36, r. 15a.

Entry by Associate.

27. Trials shall be entered by the Associate in such vacant numbers in the lists so transmitted as the party entering may select. The lists shall then be re-numbered consecutively, and shall be the cause lists for the assizes.

O. 36, r. 15a.

When entered by both parties.

28. If a trial be entered by both parties, it shall be tried in the order of the plaintiff's entry, and the defendant's entry shall be vacated.

O. 36, r. 15a.

V. Lists for London and Middlesex.

Lists in London and Middlesex.

29. *Separate lists of trials with juries and trials without juries respectively, to be tried at the sittings of the Queen's Bench Division for London and Middlesex respectively, shall be prepared, and the trials on each list shall be allotted without reference to any other list, and shall be tried at such times and in such Courts of the said Division as the Lord Chief Justice of England may arrange.*

J. A., O. 36, r. 16.

VI. Papers for Judge.

30. The party entering the trial shall deliver to the proper officer two copies of the whole of the pleadings, one of which shall be for the use of the judge *at the trial*. Such copies shall be in print, except as to such parts (if any) of the documents as are by these Rules permitted to be written.

J. A., O. 36, r. 17.

VII. Proceedings at Trial.

Non-appearance of defendant.

31. If, when a trial is called on, the plaintiff appears, and the defendant does not appear, the plaintiff may prove his claim, so far as the burden of proof lies upon him.

J. A., O. 36, r. 18. Plaintiff must file affidavit of service. See p. 105.

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32. If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counterclaim, shall be entitled to judgment dismissing the action, but if he has a counterclaim, then he may prove such counterclaim so far as the burden of proof lies upon him.

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Non-ap-
pearance
of plain-
tiff.

J. A., O. 36, r. 19. See p. 105.

33. Any verdict or judgment obtained where one party does not appear at the trial may be set aside by the Court or a judge upon such terms as may seem fit, upon an application made within six days after the trial; such application may be made either at the assizes or in Middlesex.

Setting
aside judg-
ment on
default.

J. A., O. 36, r. 20. Cf. O. 27, r. 15. *Burgoine v. Taylor*, 9 Ch. D. 1.

34. The judge may, if he think it expedient for the interests of justice, postpone or adjourn a trial for such time, and to such place, and upon such terms, if any, as he shall think fit.

Judge may
adjourn
trial.

J. A., O. 36, r. 21. *Stewart v. Gladstone*, 7 Ch. D. 394.

*35. Where a party is brought up to attend the trial or hearing of a cause or matter by virtue of any writ of habeas corpus duly issued from *the Central Office*, and by reason of the pressure of other business, or from any other cause, the trial or hearing of the cause or matter in which such party is concerned is postponed to a future day, a new writ of habeas corpus may be issued for such future day, if the Court or a judge shall so direct, without payment of any fee.

New
habeas
corpus on
postpone-
ment of
trial.

See p. 257. Cons. O. 30, r. 4.

*36. Upon a trial with a jury, the addresses to the jury shall be regulated as follows: the party who begins, or his counsel, shall be allowed at the close of his case, if his opponent does not announce any intention to adduce evidence, to address the jury a second time for the purpose of summing up the evidence, and the opposite party, or his counsel, shall be allowed to open his case, and also to sum up the evidence, if any, and the right to reply shall be the same as heretofore.

Addresses
to jury.

See p. 227. *Metzler v. Wood*, 26 W. R. 125.

*37. In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on

Evidence
in libel and
slander
cases.

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the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

Cross-examination.

*38. The judge may in all cases disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the cause or matter.

See p. 192, and *Raymond v. Tapson*, 22 Ch. D. 430

Judgment.

39. The judge may, at or after a trial, direct that judgment be entered for any or either party, or adjourn the case for further consideration, or leave any party to move for judgment. No judgment shall be entered after a trial without the order of a Court or judge.

J. A., O. 36, r. 22a. See *Wilson*, p. 327.

Note of duration of trial.

*40. The Registrar, Master, or other proper officer present at any hearing or trial, shall make a note of the times at which such hearing or trial shall commence and terminate respectively, on each day on which the same shall take place, for communication to the taxing officer if required.

Entry of findings by Associate.

41. Upon every trial at the assizes, or at the sittings of the Queen's Bench Division for London and Middlesex, where the officer present at the trial is not the officer by whom judgments ought to be entered, the Associate or Master shall enter all such findings of fact as the judge may direct to be entered, and the directions, if any, of the judge as to judgment, and the certificates, if any, granted by the judge, in a book to be kept for the purpose.

J. A., O. 36, r. 23.

Certificate of judgment.

42. If the judge shall direct that any judgment be entered for any party absolutely, the certificate of the Associate or Master to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly. The certificate shall be in the Form No. 17 in Appendix B, with such variations as circumstances may require.

J. A., O. 36, r. 24. See O. 41, r. 1.

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VIII. Assessors, Commissioners, and Referees.

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43. Trials with assessors shall take place in such manner and upon such terms as the Court or a judge shall direct.

J. A., O 36, r. 28. O. 36, r. 7; and at Chancery Chambers, O. 55, r. 19.

44. In any cause or matter the Court, or a judge of the Division to which the cause or matter is assigned, may at any time, or from time to time, order the trial and determination of such cause or matter, or of any issue of fact, or partly of fact and partly of law, *therein*, by any commissioner appointed in pursuance of the 29th section of the Principal Act, or at the sittings to be held in London and Middlesex, and such cause, matter, or issue shall be tried and determined accordingly.

Discretion
of judge as
to trial.

J. A., O. 36, r. 29. See Wilson, p. 39.

45. The business to be referred to the Official Referees appointed under the Principal Act, shall be distributed among such Official Referees in rotation by the clerks to the Registrars of the Supreme Court, Chancery Division, in the manner now used in the distribution of business amongst the Conveyancing Counsel of the Court.

Official
Referees'
distribu-
tion of
business.

J. A., O. 36, r. 29a. See p. 224. Cf. O. 51, r. 10.

46. When an order shall have been made referring any business to the Official Referee in rotation, such order, or a duplicate of it, shall be produced to the Registrar's clerk, whose duty it is to make such distribution as in the last Rule mentioned; and such clerk shall (except in the case provided by Rule 47 of this Order), indorse *on the reference* a note specifying the name of the Official Referee in rotation to whom such business is to be referred; and the order so indorsed shall be a sufficient authority for the Official Referee to proceed with the business so referred.

Name of
Referee to
be in-
dorsed on
reference.

J. A., O. 36, r. 29b. Cf. O. 51, r. 11.

47. The two last preceding Rules of this Order are not to interfere with the power of the Court or a judge to direct or transfer a reference to any one in particular of the said Official Referees, where it appears to the Court or judge to be expedient; but every such reference or transfer shall be recorded in the manner mentioned in Order 51, Rule 10, and a note to that effect be indorsed on the order of reference or transfer; and in case any such reference or transfer shall have been or shall be made to any one in particular of the said Referees, then the clerk

Order may
specify
Referee.

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- Order XXXVI.** in making the distribution of the business according to such rotation as aforesaid shall have regard to any such reference or transfer.
J. A., O. 36, r. 29c.
- Trial before Referee.** 48. Where any cause or matter, or any question in any cause or matter, is referred to a Referee, he may, subject to the order of the Court or a judge, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court or a judge, proceed with the trial *de die in diem*, in a similar manner as in actions tried with a jury.
J. A., O. 36, r. 30. *Robinson v. Robinson*, 35 L. T. 337.
- Conduct of trial.** 49. Subject to any order to be made by the Court or judge ordering the same, evidence shall be taken at any trial before a Referee, and the attendance of witnesses may be enforced by subpoena, and every such trial shall be conducted in the same manner, as nearly as circumstances will admit, as trials are conducted before a judge.
J. A., O. 36, r. 31.
- Authority of Referee.** 50. Subject to any such order as last aforesaid, the Referee shall have the same authority *with respect to discovery and production of documents*, and in the conduct of any reference or trial, *and the same power to direct that judgment be entered for any or either party*, as a judge of the High Court.
J. A., O. 36, r. 32. This over-rules *Dawvilliers v. Myers*, 17 Ch. D. 346.
- Cannot commit.** 51. Nothing in these Rules contained shall authorise any Referee to commit any person to prison or to enforce any order by attachment or otherwise.
J. A., O. 36, r. 33.
- Power to submit to decision of Court any question.** 52. The Referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and the Court shall have power to require any explanation or reasons from the Referee, and to remit the cause or matter, or any

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part thereof, for re-trial or further consideration to the same or any other Referee ; or the Court may decide the question referred to any Referee on the evidence taken before him, either with or without additional evidence as the Court may direct. Order
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Court can
remit.

J. A., O. 36, r. 34. Cf. C. L. P. Act, 1854, s. 5 ; see p. 236 and p. 227.

*53. Whenever a report shall be made by a Referee, he shall on the same day cause notice thereof to be given to all the parties to the trial or the reference before him by prepaid post letter directed to the address for service of each party, who shall in due course of post be deemed to have notice of such report. Notice of
Referee's
report.

See Daniel, *ad locum*.

*54. Where under the fifty-sixth section of the Principal Act the report of the Referee has been made in a cause or matter, the further consideration of which has been adjourned, it shall be lawful for any party, on the hearing of such further consideration, without notice of motion or summons, to apply to the Court or judge to adopt the report, or without leave of the Court or a judge to give not less than four days' notice of motion, to come on with the further consideration, to vary the report or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other Referee. Adoption
on further
considera-
tion of
report.

See p. 223.

*55. Where under the fifty-sixth section of the Principal Act the report of the Referee has been made in a cause or matter, the further consideration of which *has not* been adjourned, it shall be lawful for any party by an eight days' notice of motion to apply to the Court to adopt and carry into effect the report of the Referee, or to vary the report, or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other Referee. Applica-
tion to
adopt or
vary re-
port.

Monier v. Pepperell, 19 Ch. D. 58. These three Rules define the further powers of Referees.

IX. Writ of Inquiry and Reference as to Damages.

*56. The provisions of Rules 14, 15, 19, 34, 35, 36 and 37 of this Order, shall, with the necessary modifications, apply to an inquiry, pursuant to a writ of inquiry. Applica-
tion of
Rules to.

See p. 112. See Form Ap. J., No. 8.

57. In every action or proceeding in the Queen's Bench Ascer-
taining

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amount of damages.
Method.

Division in which it shall appear to the Court or a judge that the amount of damages sought to be recovered is substantially a matter of calculation, it shall not be necessary to issue a writ of inquiry, but the Court or a judge may direct that the amount for which final judgment is to be entered shall be ascertained by an officer of the Court, and the attendance of witnesses and the production of documents before such officer may be compelled by subpoena, and such officer may adjourn the inquiry from time to time, and shall indorse upon the order for referring the amount of damages to him the amount found by him, and shall deliver the order with such indorsement to the person entitled to the damages, and such and the like proceedings may thereupon be had as to taxation of costs, entering judgment, and otherwise, as upon the finding of a jury upon a writ of inquiry.

See p. 106.

Assessment of damages to date.

*58. Where damages are to be assessed in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.

As to matters which arise during the action, see O. 24.

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ORDER XXXVII.

I. EVIDENCE GENERALLY.

Vivâ voce and by affidavit.

1. In the absence of any agreement in writing between the solicitors of all parties, and subject to these Rules, the witnesses at the trial of any action or at any assessment of damages shall be examined vivâ voce and in open Court, but the Court or a judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or judge may think reasonable, or that any witness whose attendance in Court ought for some sufficient cause to be dispensed with be examined by interrogatories or otherwise before a commissioner or examiner; provided that, where it appears to the Court or judge that the other party bonâ fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

J. A., O. 37, r. 1. See pp. 193, 197, and 199. See Morgan, p. 551.

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*2. In default actions in rem, and in references in Admiralty actions, evidence may be given by affidavit. **Order XXXVII.**

*3. An order to read evidence taken in another cause or matter shall not be necessary, but such evidence may, in former trial. saving all just exceptions, be read on ex parte applications by leave of the Court or a judge, to be obtained at the Cf. r. 25. time of making any such application, and in any other See p. 199. case upon the party desiring to use such evidence giving two days previous notice to the other parties of his intention to read such evidence.

Cf. Cons. O. 19, rr. 4 and 5.

*4. Office copies of all writs, records, pleadings, and Office documents filed in the High Court of Justice shall be copies. admissible in evidence in all causes and matters and between all persons or parties to the same extent as the original would be admissible.

These three Rules are new. Cf. Cons. O. 1, rr. 42 and 44.

II. EXAMINATION OF WITNESSES.

See Morgan, 178.

5. The Court or a judge may, in any cause or matter Depositions. where it shall appear necessary for the purposes of justice, make any order for the examination upon oath *before the Court or judge* or any officer of the Court, or any other person and at any place, of any witness or person, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the Court or a judge may direct.

J. A., O. 37, r. 4. See *Stewart v. Gladstone*, 7 Ch. D. 394. See p. 199.

*6. An order for a commission to examine witnesses shall Form of be in the Form No. 36 in Appendix K., and the writ of order to commission shall be in the Form No. 13 in Appendix J., examine. with such variations as circumstances may require.

As to when a commission will not issue, see p. 200.

*7. The Court or a judge may in any cause or matter at Attendance. any stage of the proceedings order the attendance of any person for the purpose of producing any writings or other produce documents named in the order which the Court or judge documents. may think fit to be produced: provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial.

Morgan, p. 183.

*8. Any person wilfully disobeying any order requiring Disobedience.

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his attendance for the purpose of being examined or producing any document shall be deemed guilty of contempt of Court, and may be dealt with accordingly.

Morgan, p. 181.

**Costs of
attend-
ance.**

**Morgan,
182.**

*9. Any person required to attend for the purpose of being examined or of producing any document shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in Court.

The party producing the witness pays in first instance.

**Copy of
writ, &c.,
for ex-
aminer.**

*10. Where any witness or person is ordered to be examined before any officer of the Court, or before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the writ and pleadings, if any, or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties.

Rules 6—10 are new. See p. 199. 15 & 16 Vict. c. 86, s. 31.

**Examina-
tion, how
taken.**

*11. The examination shall take place in the presence of the parties, their counsel, solicitors or agents, and the witnesses shall be subject to cross-examination and re-examination.

15 & 16 Vict. c. 86. See p. 197 and p. 200.

**In
writing.
Morgan,
p. 180.**

*12. The depositions taken before an officer of the Court, or before any other person appointed to take the examination, shall be taken down in writing by or in the presence of the examiner, not ordinarily by question and answer, but so as to represent as nearly as may be the statement of the witness, and when completed shall be

**To be read
to witness.**

read over to the witness and signed by him in the presence of the parties, or such of them as may think fit to attend. If the witness shall refuse to sign the depositions, the examiner shall sign the same. The examiner may put down any particular question or answer if there should appear any special reason for doing so, and may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination. Any questions which may be objected to shall be taken down by the examiner in the depositions, and he shall state his opinion thereon to the counsel, solicitors, or parties, and shall refer to such statement in the depositions, but he shall not have power to decide upon the materiality or relevancy of any question.

**Questions
objected
to.**

S. 32.

Refusal to

*13. If any person duly summoned by subpoena to

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attend for examination shall refuse to attend, or if, having attended, he shall refuse to be sworn or to answer any lawful question, a certificate of such refusal, signed by the examiner, shall be filed at the Central Office, and thereupon the party requiring the attendance of the witness may apply to the Court or a judge *ex parte* or on notice for an order directing the witness to attend, or to be sworn, or to answer any question, as the case may be.

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attend or
give evi-
dence.

Cf. J. A., O. 86, r. 31. Cf. s. 33.

*14. If any witness shall object to any question which may be put to him before an examiner, the question so put, and the objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the Central Office to be there filed, and the validity of the objection shall be decided by the Court or a judge.

Objections
to answer.

S. 33.

*15. In any case under the two last preceding Rules, the Court or a judge shall have power to order the witness to pay any costs occasioned by his refusal or objection.

Costs oc-
casioned
by objec-
tions.

15 & 16 Vict. c. 86, s. 33.

*16. When the examination of any witness before any examiner shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the Central Office, and there filed.

Filing de-
positions.

See p. 197. S. 34.

*17. The person taking the examination of a witness under these Rules may, and if need be shall, make a special report to the Court touching such examination and the conduct or absence of any witness or other person thereon, and the Court or a judge may direct such proceedings and make such order as upon the report they or he may think just.

Special
report of
examiner.

As to who may be present, see p. 197 and p. 200.

*18. Except where by this Order otherwise provided, or directed by the Court or a judge, no deposition shall be given in evidence at the hearing or trial of the cause or matter without the consent of the party against whom the same may be offered, unless the Court or judge is satisfied that the deponent is dead, or beyond the jurisdiction of the Court, or unable from sickness or other infirmity to attend the hearing or trial, in any of which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence saving all just exceptions without proof of the signature to such certificate.

Consent of
deponent.

J. A., 1875, s. 20. *Warner v. Moses*, 16 Ch. D. 101.

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- Order XXXVII.** *19. Any officer of the Court, or other person directed to take the examination of any witness or person, may administer oaths.
Who may administer oaths. Cf. 15 & 16 Vict. c. 86, s. 35.
- Any party may subpoena witness.** *20. Any party in any cause or matter may by subpoena ad testificandum or duces tecum require the attendance of any witness before an officer of the Court, or other person appointed to take the examination, for the purpose of using his evidence upon any *proceeding in the cause or matter* in like manner as such witness would be bound to attend and be examined at the hearing or trial; and any party or witness having made an affidavit to be used or which shall be used on any proceeding in the cause or matter shall be bound on being served with such subpoena to attend before such officer or person for cross-examination.
 S. 40, with a proviso omitted.
- Evidence taken after trial.** *21. Evidence taken subsequently to the hearing or trial of any cause or matter shall be taken as nearly as may be in the same manner as evidence taken at or with a view to a trial.
 S. 81. See p. 289.
- Ordinary rules apply.** *22. The practice with reference to the examination, cross-examination, and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any cause or matter at any stage.
 S. 87.
- Subject to special directions.** *23. The practice of the Court with respect to evidence at a trial, when applied to evidence to be taken before an officer of the Court or other person in any cause or matter after the hearing or trial, shall be subject to any special directions which may be given in any case.
 S. 54. See p. 200.
- Depositions before issue joined. Notice.** *24. No affidavit or deposition filed or made before issue joined in any cause or matter shall without special leave of the Court or a judge be received at the hearing or trial thereof, unless within one month after issue joined, or within such longer time as may be allowed by special leave of the Court or a judge, notice in writing shall have been given by the party intending to use the same to the opposite party of his intention in that behalf.
- Evidence may be used in subsequent proceedings.** *25. All evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter.
 Cf. Rule 3. See p. 199 and p. 289. *Rules 11 to 25 are new.*
 See too, *Manorcr v. Homfray*, 19 Ch. D. 224.

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*III. SUBPOENA.

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26. Where it is intended to sue out a subpoena, a præcipe for that purpose, in the Form No. 21 in Appendix G., and containing the name or firm and the place of business or residence of the solicitor intending to sue out the same, and, where such solicitor is agent only, then also the name or firm and place of business or residence of the principal solicitor, shall in all cases be delivered and filed at the *Central Office*.

Cons. O. 28, r. 1.

27. A writ of subpoena shall be in one of the Forms 1 to 7 in Appendix J., with such variations as circumstances may require.

28. Where a subpoena is required for the attendance of a witness for the purpose of proceedings in chambers, such subpoena shall issue from the *Central Office* upon a note from the judge.

Cons. O. 35, r. 29. See Morgan, p. 127.

29. Every subpoena other than a subpoena duces tecum shall contain three names where necessary or required, but may contain any larger number of names.

Cons. O. 28, r. 3.

30. No more than three persons shall be included in one subpoena duces tecum, and the party suing out the same shall be at liberty to sue out a subpoena for each person if it shall be deemed necessary or desirable.

Cons. O. 28, r. 4.

31. In the interval between the suing out and service of any subpoena the party suing out the same may correct any error in the names of parties or witnesses, and may have the writ re-sealed upon leaving a corrected præcipe of such subpoena marked with the words "altered and re-sealed," and signed with the name and address of the solicitor suing out the same.

Cons. O. 28, r. 5.

32. The service of a subpoena shall be effected by delivering a copy of the writ, and of the indorsement thereon, and at the same time producing the original writ.

33. Affidavits filed for the purpose of proving the service of a subpoena upon any defendant must state when, where, and how, and by whom, such service was effected.

34. The service of any subpoena shall be of no validity if not made within twelve weeks after the teste of the writ.

R. 9 had "except a subpoena for costs." O. 43, r. 7. See Central Office Practice Rules, "Subpoenas," and see Forms. *The Rules on this page are new.*

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IV. PERPETUATING TESTIMONY.

Who may
commence
action to
perpetuate
testimony.

35. Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity, or office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim.

Attorney-
General
defendant.

36. In all actions to perpetuate testimony touching any honour, title, dignity, or office, or any other matter or thing in which the Crown may have any estate or interest, the Attorney-General may be made a defendant, and in all proceedings in which the depositions taken in any such action, in which the Attorney-General was so made a defendant, may be offered in evidence, such depositions shall be admissible notwithstanding any objection to such depositions upon the ground that the Crown was not a party to the action in which such depositions were taken.

See Morgan's Chy. Acts, ed. 5, p. 2 and p. 3.

37. Witnesses shall not be examined to perpetuate testimony unless an action has been commenced for the purpose.

Cons. O. 9, r. 6.

Not set
down for
trial.

38. No action to perpetuate the testimony of witnesses shall be set down for trial.

Cons. O. 9, r. 7. Cf. 5 & 6 Vict. c. 69.

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ORDER XXXVIII.

I. AFFIDAVITS AND DEPOSITIONS.

Evidence.
on motion,
&c.

1. Upon any motion, petition, or summons evidence may be given by affidavit; but the Court or a judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

J. A., O. 37, r. 2. See p. 193, and Morgan, ed. 5, p. 551. See, too, *Ellis v. Robins*, 50 L. J. Ch. 512.

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*2. Every affidavit shall be intituled in the cause or matter in which it is sworn ; but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be ; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed by the taxing officer.

Order
XXXVIII.
Affidavit.
How in-
tituled.

Cf. O. 68, r. 4, and O. 19, r. 5. *Young v. Brassey*, 1 Ch. D. 277.

3. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

How
framed.

J. A., O. 37, r. 3, and Costs, O. 6, r. 18. See p. 191 and p. 195.

*4. Affidavits sworn in England shall be sworn before a judge, District Registrar, Commissioner to administer oaths, or officer empowered under these Rules to administer oaths.

Before
whom
sworn.

See 16 & 17 Vict. c. 78, and *Morgan*, p. 202.

*5. Every Commissioner to administer oaths shall express the *time* when and the *place* where he shall take any affidavit, or the acknowledgment of any deed, or recognisance ; otherwise the same shall not be held authentic, nor be admitted to be filed or enrolled *without the leave of the Court or a judge* ; and every such Commissioner shall express the time when, and the place where, he shall do any other act incident to his office.

Duties of
Com-
missioner.

Time.

Cons. O. 4.

6. All examinations, affidavits, declarations, affirmations, and attestations of honour in causes or matters depending in the *High Court*, and also acknowledgments required for the purpose of enrolling any deed in the *Central Office*, may be sworn and taken in Scotland or Ireland or the Channel Islands, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any judge, Court, notary public, or person lawfully authorised to administer oaths in such country, colony, island, plantation, or place respectively, or before any of Her Majesty's consuls or vice-consuls in any foreign parts out of Her Majesty's dominions ; and the judges and other officers of the High Court shall take

Affidavits
taken in
colonies,
&c.

RULES OF THE SUPREME COURT.

Order XXXVIII. judicial notice of the seal or signature, as the case may be, of any such Court, judge, notary public, person, consul, or vice-consul, attached, appended, or subscribed to any such examinations, affidavits, affirmations, attestations of honour, declarations, acknowledgments, or to any other deed or document.

Ch. Pro. Act, 1852, s. 22. See p. 187.

Form. 7. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed bookwise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule.

J. A., O. 37, r. 3a.

Description and address of deponent. 8. Every affidavit shall state the description and true place of abode of the deponent.

J. A., O. 37, r. 3b. See p. 196, and *Ex parte King*, L. R. 7 C. P. 77.

By two or more deponents. 9. In every affidavit made by two or more deponents the names of the several persons making the affidavits shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

J. A., O. 37, r. 3c, p. 196.

Filing. *10. Every affidavit or other proof used in Admiralty actions shall be filed in the Admiralty Registry: every affidavit used in Probate actions shall be filed in the Probate Registry: every affidavit used on the Crown side of the Queen's Bench Division shall be filed in the Crown Office Department: every affidavit used in a cause or matter proceeding in a District Registry shall be filed there: and every other affidavit used shall be filed in the Central Office. There shall be appended to every affidavit a note showing on whose behalf it is filed, and no affidavit shall be filed or used without such note, unless the Court or a judge shall otherwise direct.

See O. 37, r. 3d.

Scandalous matter. *11. The Court or a judge may order to be struck out from any affidavit any matter which is scandalous, and

RULES OF THE SUPREME COURT.

may order the costs of any application to strike out such matter to be paid as between solicitor and client.

**Order
XXXVIII**

Compare the power of the Court as to striking out scandalous matter from pleadings and interrogatories : O. 19, r. 27, and O. 31, rr. 6 and 7. See, too, as to cross-examination, O. 36, r. 38.

12. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure, shall without leave of the Court or a judge be read or made use of in any matter depending in Court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, or, if taken at the Central Office, either by his initials or by the stamp of that office, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are rewritten and signed or initialled in the margin of the affidavit by the officer taking it.

Alterations and erasures.

J. A., O. 37, r. 3e. See p. 196 and r. 22.

13. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

By illiterate or blind persons.

J. A., O. 37, r. 3f. See p. 196.

*14. The Court or a judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

**Court may waive irregularity.
Memorandum.**

See p. 197.

15. In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper filing stamp, and shall at the time when it is used be delivered to and left with the proper officer in Court or in chambers, who shall send it *to be filed*. An office copy of an affidavit may in all cases be used, the

Stamping and use of office copies.

RULES OF THE SUPREME COURT.

Order XXXVIII

original affidavit having been previously filed, and the copy duly authenticated with the seal of the office.

J. A., O. 37, r. 3*g*. See Wilson, p. 345.

Not to be
sworn
before
solicitor of
the party,
or his
agent.

*16. No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent or correspondent of such solicitor, or before the party himself.

See p. 196.

Or clerk.

*17. Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk, or partner.

Filing
after time
limited.

*18. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the Court or a judge.

As to the enlargement of time, see Morgan, p. 555.

Must be
sworn
before
order
made.

*19. Except by leave of the Court or a judge no order made *ex parte* in Court founded on any affidavit shall be of any force unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion.

***II. AFFIDAVITS AND EVIDENCE IN CHAMBERS.**

Notice of
intention
to use.

20. The party intending to use any affidavit in support of any application made by him in chambers in the Chancery Division shall give notice to the other parties concerned of his intention in that behalf.

Cons. O. 35, r. 27. *Jenner v. Morris*, 10 W. R. 640.

When pre-
viously
read in
Court.

21. All affidavits which have been previously made and read in Court upon any proceeding in a cause or matter may be used before the judge in chambers.

Cons. O. 35, r. 28.

Alter-
ations in
account.
See r. 12.
Morgan,
167.
Exhibits.

22. Every alteration in an account verified by affidavit to be left at chambers shall be marked with the initials of the Commissioner or officer before whom the affidavit is sworn, and such alterations shall not be made by erasure.

23. Accounts, extracts from parish registers, particulars of creditors' debts, and other documents referred to by affidavit, shall not be annexed to the affidavit, or referred

RULES OF THE SUPREME COURT.

to in the affidavit as annexed, but shall be referred to as exhibits. **Order
XXXVIII.**

Exhibits used to be annexed: Wilson, ed. 3, p. 345.

24. Every certificate on an exhibit referred to in an affidavit signed by the Commissioner or officer before whom the affidavit is sworn shall be marked with the short title of the cause or matter. **Exhibits
to be
marked
with title.**

The last three Rules are from the Reg., Aug. 8, 1857.

III. TRIAL ON AFFIDAVIT.

25. Within fourteen days after a consent for taking evidence by affidavit as between the parties has been given, or within such time as the parties may agree upon, or the Court or a judge may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof. **Time for
filing by
plaintiff.**

J. A., O. 38, r. 1. See p. 191 and p. 197.

26. The defendant, within fourteen days after delivery of such list, or within such time as the parties may agree upon, or the *Court or a judge* may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof. **Time for
filing by
defendant.**

J. A., O. 38, r. 2. *Glossop v. Heston Local Board*, W. N. 1878, 72.

27. Within seven days after the expiration of the last-mentioned fourteen days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof. **Time for
affidavits
in reply.**

J. A., O. 38, r. 3. *Gilbert v. Comedy Co.*, 16 Ch. D. 100.

28. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party may serve upon the party by whom such affidavit has been filed a notice in writing, requiring the production of the deponent for cross-examination at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court *or a judge*. **Notice to
cross-
examine.**

RULES OF THE SUPREME COURT.

Order XXXVIII.

The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

J. A., O. 38, r. 4. *Richards v. Goddard*, L. R. 10 Ch. 288, was decided before the Rule was made.

Enforcing attend- ance.

29. The party to whom such notice as is mentioned in the last preceding Rule is given shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined.

J. A., O. 38, r. 5.

Printing.

30. When the evidence *under this Order* is taken by affidavit, such evidence shall be printed, and the notice of trial shall be given at the same time after the close of the evidence as in other cases is by these Rules provided after the close of the pleadings: *provided that other affidavits may be printed if all the parties interested consent thereto, or the Court or a judge so order: provided also that this Rule shall not apply in the Probate, Divorce and Admiralty Division to default actions in rem, or references in actions, or actions for limitation of liability, unless the Court or a judge shall otherwise order.

Excep- tions.

J. A., O. 38, r. 6. As to time, see *Waring v. Lacey*, 24 W. R. 318.

Order XXXIX.

ORDER XXXIX.

MOTION FOR NEW TRIAL.

Applica- tion for new trial to Divi- sional Court.

1. Every motion for a new trial *or to set aside a verdict, finding, or judgment*, shall be made (1) in every cause or matter by the Principal Act assigned to the Probate, Divorce and Admiralty Division, where there has been a trial thereof or of any issue therein with a jury, to a Divisional Court of that Division, one of the judges of which shall (when practicable) sit on the hearing of such motion; (2) in every other cause or matter, where there has been a trial thereof or of any issue therein with a jury, to a Divisional Court of the Queen's Bench Division; and (3) where there has been a trial without a jury, by appeal to the Court of Appeal.

To Court of Appeal.

Compare the provision in J. A., O. 39, r. 1. See p. 229.

RULES OF THE SUPREME COURT.

*2. No judge shall sit on the hearing of any motion for a new trial in any cause or matter tried with a jury before himself.

**Order
XXXIX.**

*3. Every application for a new trial shall be by notice of motion, and *no rule nisi*, order to show cause, or formal proceeding other than such notice of motion, shall be made or taken. The notice shall state the grounds of the application, and whether all or part only of the verdict or findings is complained of.

Judge who
tried not
to sit.

Applica-
tion to be
by notice
of motion.
No rule

*4. The notice of motion shall be an *eight* days notice, and shall be served within the times following: viz., if the trial has taken place in London or Middlesex, within eight days after the trial; if the trial has taken place elsewhere than in London or Middlesex, within seven days after the last day of sitting on the circuits for England and Wales during which the trial shall have taken place. The time of the vacations shall not be reckoned in the computation of the time for serving the notice of motion.

nisi.
Time to
serve
notice of
motion.

*5. The notice may be amended at any time by leave of the Court or a judge on such terms as the Court or judge may think just.

Amend-
ment of
notice.

Compare the amendment of pleadings in O. 28.

6. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, *or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them*, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, the Court may give final judgment as to part thereof, *or some or one only of the parties*, and direct a new trial as to the other part only *or as to the other party or parties*.

When new
trial not
granted.

J. A., O. 39, r. 3. An important change is here introduced as to the grounds of a new trial as of right; and see *Marsh v. Isaacs*, 45 L. J. C. P. 505, and p. 280.

7. A new trial may be ordered on any question, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

New trial
as to part.

J. A., O. 39, r. 4.

RULES OF THE SUPREME COURT.

Order XXXIX. 8. A new trial shall not be granted by reason of the ruling of any judge that the stamp upon any document is sufficient, or that the document does not require a stamp.
On account of stamp. C. L. P. Act, 1854, s. 31.

Order XL.

ORDER XL.

MOTION FOR JUDGMENT.

By motion. 1. Except where by the Acts or by these Rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment.

J. A., O. 40, r. 1. See p. 220.

When no judgment at trial.

Time for setting down.

2. Where at the trial the judge or referee abstains from directing any judgment to be entered, the plaintiff *may set down a motion* for judgment. If he does not set down *such a motion* and give notice thereof to the other parties within ten days after the trial, any defendant may set *down a motion* for judgment, and give notice thereof to the other parties.

J. A., O. 40, r. 3, which said at the trial of any action the plaintiff might set down the action upon motion, &c.

Where judgment at trial wrong.

3. Where, at or after a trial with a jury, the judge has directed that any judgment be entered, any party may apply to set aside such judgment and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason *that the finding of the jury upon the questions submitted to them has not been properly entered.*

J. A., O. 40, r. 4.

**Applica-
tion to set
aside.**

4. Where, at or after a trial by a judge, either with or without a jury, the judge has directed that any judgment be entered, any party may apply to set aside such judgment and to enter any other judgment, upon the ground that, upon the finding as entered, the judgment so directed is wrong.

J. A., O. 40, r. 4.

**To Court
of Appeal.**

5. An application under Rules 3 and 4 of this Order shall be to the Court of Appeal, *unless, where there has

RULES OF THE SUPREME COURT.

been a trial with a jury, there is also a motion for a new **Order XL** trial, in which case it shall be to the Divisional Court by --- which such motion shall be heard.

J. A., O. 40, r. 4. See O. 39, r. 1.

6. Where at a trial *by a referee* he has directed that any judgment be entered, any party may move to set aside such judgment, and to enter any other judgment, on the ground that upon the finding as entered the judgment so directed is wrong: *Provided that in the Queen's Bench Division such motion shall be made to a Divisional Court. Motion to set aside judgment of referee

J. A., O. 40, r. 5. *Mellin v. Monico*, 3 C. P. D. 142. See p. 227

7. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down *a motion for judgment* as soon as such issues or questions have been determined. If he does not set down *such a motion*, and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down *a motion* for judgment, and give notice thereof to the other parties. When issues determined.

J. A., O. 40, r. 7; and J. A., Form D. 18.

8. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or a judge for leave to set down *a motion for judgment*, without waiting for such trial or determination. And the Court or judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other *issues* of fact. Where some issues only determined.

J. A., O. 40, r. 8. *Republic of Bolivia v. Bolivian Navigation Co.*, 24 W. R. 361.

9. No *motion for judgment* shall, except by leave of the Court or a judge, be set down after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do. Time for, one year.

J. A., O. 40, r. 9.

RULES OF THE SUPREME COURT.

Order XL. 10. Upon a motion for judgment, or upon an application for a new trial, the Court may draw all inferences of fact, not inconsistent with the finding of the jury, and if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it may think fit.

J. A., O. 40, r. 10. *Waddell v. Blockey*, 10 Ch. D. 416. As to when further consideration is not necessary, see *Gilbert v. Russell*, W. N. 1875, 225; and *Turquand v. Wilson*, 1 Ch. D. 85.

As to form of order when further consideration is reserved, see *Bennett v. Moore*, 1 Ch. D. 692.

Order XLI.

ORDER XLI.

ENTRY OF JUDGMENT.

How effected. 1. Every judgment shall be entered by the proper officer in the book to be kept for the purpose. The party entering the judgment shall deliver to the officer a copy of the whole of the pleadings in the cause, other than any petition or summons; such copy shall be in print, except such parts (if any) thereof as are by these Rules permitted to be written: Provided that no copy need be delivered of any document a copy of which has been delivered on entering any previous judgment in such cause. The Forms in Appendix F. shall be used, with such variations as circumstances may require.

J. A., O. 41, r. 1. As to the duties of the Registrars in Chancery, see Cons. O. 1, rr. 17, 33.

In Central Office. 2. All judgments in the Queen's Bench Division, shall, if entered in London, be entered in the Central Office.

J. A., O. 41, r. 1a.

Date of judgment in Court. 3. Where any judgment is pronounced by the Court or a judge in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, unless the Court or judge shall otherwise order, and the judgment shall take effect from that date: *Provided that*

RULES OF THE SUPREME COURT.

by special leave of the Court or a judge a judgment may be ante-dated or post-dated. Order XLI.

J. A., O. 41, r. 2. And as to conditional judgments, O. 42, r. 9; and see O. 42, r. 2.

4. In all cases not within the last preceding Rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date. Other cases.

J. A., O. 41, r. 3.

*5. Every *judgment* or order made in any *cause* or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the *judgment* or order, within which the act is to be done, and upon the copy of the judgment or order which shall be served upon the person required to obey the same there shall be indorsed a memorandum in the words or to the effect following, viz :— Indorsement on judgment.

“If you, the within-named *A. B.*, neglect to obey this *judgment* [or order] by the time therein limited, you will be liable to *process of execution* for the purpose of compelling you to obey the same *judgment* [or order].”

Under Cons. O. 23, r. 10, the liability was to have “property sequestered,” and further to be arrested and committed to prison.

6. Where under the Acts or these Rules, or otherwise, it is provided that any judgment may be entered upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required, he shall enter judgment accordingly. Duty of officer.

J. A., O. 41, r. 4. This Rule is imperative.

7. Where by the Acts or these Rules, or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order or certificate sealed with the seal of the Court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly. Authority to enter judgment.

J. A., O. 41, r. 5.

*8. Where reference is made to a Master to ascertain the amount for which final judgment is to be entered, the Master's certificate shall be filed in the Central Office when judgment is entered. Master's certificate to be filed.

RULES OF THE SUPREME COURT.

Order XLI. *9. In any cause or matter where the defendant has appeared by solicitor, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his solicitor or agent.

See *Sullivan v. Purson*, Ex parte *Morrison*, L. R. 4 Q. B. 153, and *Hints to Solicitors*, p. 54.

Defendant appearing in person. *10. Where the defendant has not appeared, or has appeared in person, no such order shall be made unless the defendant attends before a judge and gives his consent in person, or unless his written consent is attested by a solicitor acting on his behalf, except in cases where the defendant is a barrister, conveyancer, special pleader, or solicitor.

Order XLII.

ORDER XLII.

EXECUTION.

No demand necessary. *1. Where any person is by any judgment or order directed to pay any money, or to deliver up or transfer any property real or personal to another, it shall not be necessary to make any demand thereof, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same without demand.

Non-compliance with conditions. *2. Where any person who has obtained any judgment or order upon condition does not perform or comply with such condition, he shall be considered to have waived or abandoned such judgment or order so far as the same is beneficial to himself, and any other person interested in the matter may on breach or non-performance of the condition take either such proceedings as the judgment or order may in such case warrant, or such proceedings as might have been taken if no such judgment or order had been made, unless the Court or a judge shall otherwise direct.

Cons. O. 23, r. 22.

Judgment for recovery of money. 3. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of any Court whose jurisdiction is transferred by the *Principal Act* might have been enforced at the time of the passing thereof.

J. A., O. 42, r. 1. See p. 260.

RULES OF THE SUPREME COURT.

4. A judgment for the payment of money into Court may be enforced by writ of sequestration, or in cases in which attachment is authorised by law, by attachment. **Order XLII.**

J. A., O. 42, r. 2. See p. 106 and p. 261, and r. 31. See, too, O. 48, rr. 3—6. The forms are given in the Appendix. As to attachment, see rr. 6 and 7, and O. 44. For payment into Court.

5. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession. For recovery of land.

J. A., O. 42, r. 3. See O. 47.

6. A judgment for the recovery of any property other than land or money may be enforced: For recovery of other property.

- (a.) By writ for delivery of the property:
- (b.) By writ of attachment:
- (c.) By writ of sequestration.

J. A., O. 42, r. 4. See O. 48, rr. 1 and 2, and p. 272.

7. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal. Enforcing performance of any act.

J. A., O. 42, r. 5. Also by sequestration, O. 47. *Gilbert v. Endean*, 9 Ch. D. 266; *Piper v. Piper*, W. N. 1876, 202; and see note to O. 41, r. 5.

8. In these Rules the term “writ of execution” shall include writs of fieri facias, capias, elegit, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term “issuing execution against any party” shall mean the issuing of any such process against his person or property as under the preceding Rules of this Order shall be applicable to the case. Meaning of terms.

J. A., O. 42, r. 6. This does not apply to equitable execution, as to which see p. 271.

9. Where a judgment or order is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a judge for leave to issue execution against such party. And the Court or judge may, if satisfied that the right to relief has arisen according to the terms of the judgment or order, Judgment for conditional relief.

RULES OF THE SUPREME COURT.

Order XLII

order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

J. A., O. 42, r. 7.

Execution against a firm.

10. Where a judgment or order is against a *firm*, execution may issue:—

(a.) Against any property of the *partnership*;

(b.) Against any person who *has appeared in his own name under Order 12, Rule 15*, or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(c.) Against any person who has been served, as a partner, with the writ of summons, and has failed to appear.

If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a judge for leave so to do; and the Court or judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

J. A., O. 42, r. 8. See p. 269. *Kendall v. Hamilton*, 4 App. Ca. 504.

Docu- ments to be pro- duced.

11. No writ of execution shall be issued without the production to the officer by whom the same should be issued of the judgment or order upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the creditor to execution.

J. A., O. 42, r. 9.

Filing præcipe for writ.

12. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a præcipe for that purpose. The præcipe shall contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firm against whose goods, the execution is to be issued; and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it, if he do so in person.

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The Forms in Appendix G. shall be used, with such variations as circumstances may require. Order
XLII.

J. A., O. 42, r. 10. As to the creditor's solicitor's duties, see p. Form. 264.

13. Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be. mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's or defendant's residence, if any such there be. Indorse-
ment of
writ of
execution.

J. A., O. 42, r. 11.

14. Every writ of execution shall bear date of the day on which it is issued. The Forms in Appendix H. shall be used, with such variations as circumstances may require. Date of
writ.
Form.

J. A., O. 42, r. 12.

15. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered. Poundage,
fees and
expenses

J. A., O. 42, r. 13. C. L. P. Act, 1852, s. 123. *Mahon v. Miles*, 30 W. R. 123.

16. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment or order, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of £4 per cent. per annum from the time when the judgment or order was entered *or made*, provided that in cases where there is an agreement between the parties that more than £4 per cent. interest shall be secured by the judgment or order, then the indorsement may be accordingly to levy the amount of interest so agreed. Indorse-
ment of
direction
to sheriff.

J. A., O. 42, r. 14. Cf. Cons. O. 42, rr. 9—11. See p. 264.

RULES OF THE SUPREME COURT.

Order XLII.

When
execution
may issue.

17. Every person to whom any sum of money or any costs shall be payable under a judgment or order shall, *so soon as the money or costs shall be payable*, be entitled to sue out one or more writ or writs of fieri facias or one or more writ or writs of elegit to enforce payment thereof, subject nevertheless as follows:—

(a.) If the judgment or order is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period :

(b.) The Court or a judge may, at or after the time of giving judgment or making an order, stay execution *until such time as they or he shall think fit*.

J. A., O. 42, r. 15 : *Re Leeds Banking Co.*, L.R. 1 Ch. 150, and p. 261.

In Chan-
cery Divi-
sion.

18. Upon any judgment *or order* for the recovery or payment of a sum of money and costs, there may be, at the election of the party entitled thereto, either one writ or separate writs of execution for the recovery of the sum and for the recovery of the costs, but a second writ shall only be for costs and shall be issued not less than eight days after the first writ.

J. A., O. 42, r. 15a. For Form, see J. A., App. F., No. 1a.

Time for
issuing
execution.

*19. A party who has obtained judgment or an order, not being a judgment for payment of money or costs, or for the recovery of land, may issue execution in fourteen days, unless the Court or a judge shall order execution to issue at an earlier or later date with or without terms.

Compare as to time, C. L. P. Act, 1852, s. 120 ; R. G. H. T. 1853.

Duration
and
renewal of
writ.

20. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided ; but such writ may, at any time before its expiration, by leave of the Court or a judge, be renewed by the party issuing it for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the Court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his *solicitor*, and bearing the like seal of the Court ; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

J. A., O. 42, r. 16. See p. 264.

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21. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as in the last preceding Rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

**Order
XLII**

Proof of
renewal.

J. A., O. 42, r. 17.

22. As between the original parties to a judgment or order, execution may issue at any time within six years from the recovery of the judgment or the date of the order.

Within six
years.

J. A., O. 42, r. 18. This and the two preceding Rules are taken from C. L. P. Act, 1852, ss. 124, 125, and 128.

*23. In the following cases, viz. :—

(a.) Where six years have elapsed since the judgment or date of the order, or any change has taken place by death or otherwise in the parties entitled or liable to execution ;

After six
years.

*(b.) Where a husband is entitled or liable to execution upon a judgment or order for or against a wife ;

*(c.) Where a party is entitled to execution upon a judgment of assets in futuro ;

*(d.) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded against such company, or against a public officer or other person representing such company ;

the party alleging himself to be entitled to execution may apply to the Court or a judge for leave to issue execution accordingly. And such Court or judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or judge may impose such terms as to costs or otherwise as shall be just.

J. A., O. 42, r. 19 ; see p. 43, and 15 & 16 Vict. c. 76, s. 129.

24. Every order of the Court or a judge in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect.

Order en-
forced as
judgment.

J. A., O. 42, r. 20.

*25. An order of commitment under the Debtors Act, 1869, shall bear date on the day on which such order was

Order of
commit-
ment

RULES OF THE SUPREME COURT.

<p>Order XLII</p> <hr/> <p>under Debtors Act.</p> <p>How per- sons not parties enforce.</p>	<p>made, and shall continue in force for one year from such date and no longer ; but it may be renewed in the manner provided for writs of execution by Rule 20 of this Order.</p> <p>See p. 240.</p> <p>26. Any person not being a party to a <i>cause or matter</i>, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to such <i>cause or matter</i> ; and any person not being a party to a <i>cause or matter</i>, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to such <i>cause or matter</i>.</p> <p>J. A., O. 42, r 21, which limited its application to cases other than those mentioned in (J. A.) O. 42, r. 18.</p>
<p>Audita querela.</p>	<p>27. No proceeding by audita querela shall hereafter be used ; but any party against whom judgment has been given may apply to the Court or a judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded ; and the Court or judge may give such relief and upon such terms as may be just.</p> <p>J. A., O. 42, r. 22. See R. G. H. T., 1853, r. 79.</p>
<p>Saving clause.</p>	<p>28. Nothing in this Order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.</p> <p>J. A., O. 42, r. 23. As, for instance, equitable execution, and <i>Ex parte Evans</i>, 13 Ch. D. 252.</p>
<p>Order of writs.</p>	<p>29. Nothing in this Order shall affect the order in which writs of execution may be issued.</p> <p>J. A., O. 42, r. 24. As to writs in aid, see O. 43, rr. 2—5.</p>
<p>Enforce- ment of manda- mus.</p>	<p>*30. If a mandamus, granted in an action or otherwise, or a mandatory order, injunction, or judgment for the specific performance of any contract be not complied with, the Court or a judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person appointed by the Court or judge, at the cost of the disobedient party, and</p>

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upon the act being done, the expenses incurred may be ascertained in such manner as the Court or a judge may direct, and execution may issue for the amount so ascertained, and costs.

Order
XLII.

See p. 243. Cf. C. L. P. Act, 1854, s. 71 and s. 74.

*31. Any judgment or order against a corporation willfully disobeyed may, by leave of the Court or a judge, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property.

Enforcement of order against corporation.

Cf. C. L. P. Act, 1860, s. 33, and Day, p. 290.

II. DISCOVERY IN AID OF EXECUTION.

32. When a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the Court or a judge for an order that the debtor *liable under such judgment or order, or in the case of a corporation that any officer thereof*, be orally examined, as to whether any and what debts are owing to the debtor, *and whether the debtor has any and what other property or means of satisfying the judgment or order*, before a judge or an officer of the Court as the Court or judge shall appoint; and the Court or judge may make an order for the attendance and the examination of such debtor, or of any other person, and for the production of any books or documents.

Examination of judgment debtor. Corporation. As to what. Before whom.

J. A., O. 45, r. 1. C. L. P. Act, 1854, s. 60. The new part of this Rule provides for a case like *Dickson v. Neath and Brecon Railway Co.*, L. R. 4 Exch. 87. The examination must now be before an officer of the Court, and not such person generally as the Court may appoint. See p. 268.

*33. In case of any judgment or order other than for the recovery or payment of money, if any difficulty shall arise in or about the execution or enforcement thereof, any party interested may apply to the Court or a judge, and the Court or judge may make such order thereon for the attendance and examination of any party or otherwise as may be just.

Where judgment not for recovery of money.

As to the nature of the examination, see *Republic of Costa Rica v. Strousberg*, 16 Ch. D. 8.

34. The costs of any application *under the last two preceding Rules or either of them*, and of any proceedings arising from or incidental thereto, shall be in the discretion of the Court or a judge, *or in the discretion of such*

Costs.

RULES OF THE SUPREME COURT.

Order
XLII.

officer as in Rule 32 mentioned, if the Court or a judge shall so direct.

J. A., O. 45, r. 10.

Order
XLIII.

ORDER XLIII.

I. WRITS OF FIERI FACIAS, ELEGIT, AND SEQUESTRATION.

Effect of. 1. Writs of fieri facias and of elegit shall have the
Method of same force and effect as the like writs have heretofore
execution. had, and shall be executed in the same manner in which
the like writs have heretofore been executed.

J. A., O. 43, r. 1. See p. 263. If the sheriff neglects to make
a return, see *In re Heiron's Estate*, 12 Ch. D. 795.

Writ of *2. Where it appears, upon the return of any writ of
venditioni fieri facias, that the sheriff or other officer has by virtue of
exponas. such writ seized, but not sold, any goods of the person
directed to pay a sum of money or costs, the person to
whom such sum of money or costs is payable shall, imme-
diately after such writ with such return shall have been
filed as of record, be at liberty to sue out a writ of vendi-
tioni exponas.

Cons. O. 29, r. 9.

Fieri facias *3. Where it appears, upon the return of any writ of
de bonis fieri facias or any writ of elegit, that the person against
ecclesiast- whom such writ was so issued is a beneficed clerk, and
icia. has no goods or chattels, nor any lay fee in the bailiwick
of the sheriff to whom such writ was directed, the person
to whom the sum of money or costs mentioned in such
writ is or are payable shall, immediately after such writ
with such return shall have been filed as of record, be at
liberty to sue out one or more writs of fieri facias de
Sequestra- bonis ecclesiasticis, or one or more writs of sequestration.
tion.

This writ is mentioned as a writ in aid in J. A., O. 43, r. 2.
Cons. O. 29, r. 11. *Rabbits v. Woodward*, W. N. 1868, 152, 199.

Proceed- *4. Such writs as in the last preceding Rule mentioned,
ings upon. when sealed, shall be delivered to the Bishop to be exe-
cuted by him, and such writs, when returned by the
Bishop, shall be delivered to the parties or solicitors by
whom respectively they were sued out, and shall thereupon
be filed as of record in the *Central Office*; and for the

RULES OF THE SUPREME COURT.

execution of such writs the Bishop or his officers shall not take or be allowed any fees other than such as are or shall be from time to time allowed by lawful authority.

Order
XLIII.

Cons. O. 20, r. 13.

5. Writs of venditioni exponas, distringas nuper vice comitem, fieri facias de bonis ecclesiasticis, sequestrari facias de bonis ecclesiasticis, and all other writs in aid of a writ of fieri facias or of elegit, may be issued and executed in the same cases and in the same manner as heretofore.

Writs in
aid of fi. fa.

J. A., O. 43, r. 2.

*6. Where any person is by any judgment or order directed to pay money into Court or to do any other act in a limited time, and after due service of such judgment or order refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment or order shall, at the expiration of the time limited for the performance thereof, be entitled, *without obtaining any order for that purpose*, to issue a writ of sequestration against the estate and effects of such disobedient person. *Such writ of sequestration shall have the same effect as a writ of sequestration in Chancery had before the commencement of the Principal Act, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration were before the same date dealt with by the Court of Chancery.

Writ of
sequestra-
tion.
When
issued.

Effect of.

See Debtors Act, 1869, ss. 3 and 6. Cons. O. 23, r. 10. See p. 263.

*7. No subpoena for the payment of costs, and, unless by leave of the Court or a judge, no sequestration to enforce such payment, shall be issued.

Leave
necessary
for sub-
poena for
costs.

See Cons. O. 29, r. 3, and Cons. O. 28, r. 9, as to time of service.

ORDER XLIV.

Order
XLIV.

ATTACHMENT.

1. A writ of attachment shall have the same effect as a writ of attachment issued out of the Chancery Division has heretofore had.

Effect.

J. A., O. 44, r. 1.

RULES OF THE SUPREME COURT.

Order XLIV.

Leave to
issue writ
of.
Notice.

2. No writ of attachment shall be issued without the leave of the Court or a judge, to be applied for on notice to the party against whom the attachment is to be issued.

J. A., O. 44, r. 2. See p. 238 and p. 240.

Order XLV.

ORDER XLV.

ATTACHMENT OF DEBTS.

See 17 & 18 Vict. c. 125, ss. 29, 30, and 60—67.

Garnishee
orders.

Attach-
ment of
debt.

Order for
payment.

1. The Court or a judge may, upon the ex parte application of *any person who has obtained a judgment or order for the recovery or payment of money*, either before or after any oral examination of the debtor liable under such judgment or order, and upon affidavit by himself or his solicitor stating that judgment has been recovered, *or the order made*, and that it is still unsatisfied, and to what amount, and that any other person is indebted to such debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to such debtor shall be attached to answer the judgment or order; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a judge or an officer of the Court, as such Court or judge shall appoint, to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor, or so much thereof as may be sufficient to satisfy the judgment or order.

J. A., O. 45, r. 2. C. L. P. Act, 1854, s. 61. See pp. 267, 269. As to debts accruing due, see *Rapier v. Wright*, 14 Ch. D. 643.

Effect of
service of
order.

2. Service of an order that debts, due or accruing to a debtor liable under a judgment or order, shall be attached, or notice thereof to the garnishee, in such manner as the Court or judge shall direct, shall bind such debts in his hands.

J. A., O. 45, r. 3; C. L. P. Act, 1854, s. 62.

Execution
against
garnishee.

3. If the garnishee does not forthwith pay into Court the amount due from him to the debtor, liable under a judgment or order, or an amount equal to the judgment *or order*, and does not dispute the debt due or claimed to

RULES OF THE SUPREME COURT.

be due from him to such debtor, or if he does not appear upon summons, then the Court or judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment or order.

**Order
XLV.**

J. A., O. 45, r. 4. Form of Order, J. A., App. H. 38.

4. If the garnishee disputes his liability, the Court or judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined.

Issue if
garnishee
disputes.

J. A., O. 45, r. 5. This Rule and the preceding one are taken from the C. L. P. Act, 1854, ss. 63 and 64.

5. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or a judge may order such third person to appear, and state the nature and particulars of his claim upon such debt.

When lien
of third
party
asserted.

J. A., O. 45, r. 6 ; C. L. P. Act, 1860, s. 29 ; *Roberts v. Death*, 8 Q. B. D. 319.

6. After hearing the allegations of any third person under such order, as in Rule 5 mentioned, and of any other person whom by the same or any subsequent order the Court or a judge may order to appear, or in case of such third person not appearing when ordered, the Court or judge may order execution to issue to levy the amount due from such garnishee, or any issue or question to be tried or determined according to the preceding Rules of this Order, and may bar the claim of such third person, or make such other order as such Court or judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Court or judge shall think just and reasonable.

Barring of
third
party.

J. A., O. 45, r. 7 ; C. L. P. Act, 1860, s. 30. As to consent, see *Eade v. Winsor*, 47 L. J. Q. B. 584.

7. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the debtor, liable under

Discharge
of gar-
nishee.

RULES OF THE SUPREME COURT.

Order XLV.

a judgment or order, to the amount paid or levied, although such proceeding may be set aside, or the judgment or order reversed.

J. A., O. 45, r. 8. C. L. P. Act, 1854, s. 65. *Mayor of London v. Joint Stock Bank*, 6 App. Ca. 393. This Rule does not apply to a debt due from a judgment debtor, which is conditional only: *Howell v. Metropolitan D. Ry. Co.*, 19 Ch. D. 508. See, too, *Turner v. Jones*, 1 H. & C. 878.

Attach- ment book.

8. There shall be kept by the proper officer a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and copies of any entries made therein may be taken by any person upon application to the proper officer.

J. A., O. 45, r. 9.

Costs.

9. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or a judge.

J. A., O. 45, r. 10. The last two Rules are from C. L. P. Act, 1854, ss. 66 and 67. See *Wintle v. Williams*, 3 H. & N. 288.

Order XLVI.

ORDER XLVI.

CHARGING ORDERS, DISTRINGAS, AND STOP ORDERS.

Charging order.

1. An order charging stock or shares may be made by any Divisional Court or by any judge, and the proceedings for obtaining such order shall be such as are directed, and the effect shall be such as is provided by the Acts 1 & 2 Vict. c. 110, ss. 14 and 15; and 3 & 4 Vict. c. 82, s. 1.

J. A., O. 46, r. 1, and for Forms of Orders, J. A., App. H. 25, 26. See pp. 268 and 269. *Stanley v. Stanley*, 7 Ch. D. 589. As to charging orders under the Solicitors' Act, see *Hints to Solicitors*, p. 194.

Distringas under 5 Vict. c. 5, s. 5.

2. No writ of distringas shall hereafter be issued under the Act 5 Vict. c. 5, s. 5.

J. A., O. 46, r. 2a.

RULES OF THE SUPREME COURT.

3. In the following Rules of this Order the expression "Company" includes the Governor and Company of the Bank of England and any other public company, whether incorporated or not, and the expression "stock" includes shares, securities, and money.

J. A., O. 46, r. 3. See r. 8.

**Order
XLVI**

Effect of
words
"com-
pany" and
"stock."

4. Any person claiming to be interested in any stock standing in the books of a company may, on an affidavit *by himself or his solicitor in the Form No. 27 in Appendix B.*, with such variations as circumstances may require, and on filing the same in the Central Office with a notice in the Form No. 22 in the same Appendix, *with such variations as circumstances may require*, and on procuring an office copy of the affidavit and a duplicate of the filed notice authenticated by the seal of the Central Office, serve the office copy and duplicate notice on the company.

Affidavit
and notice.

Filing affi-
davit and
notice as to
stock.

J. A., O. 46, r. 4. See p. 269, and rr. 9 and 10.

5. There shall be appended to the affidavit a note stating the person on whose behalf it is filed, and to what address notices (if any) for that person are to be sent.

Note of
address of
claimant.

J. A., O. 46, r. 5.

6. All such notices shall be deemed to have been duly sent if sent through the post by a prepaid letter directed to that person at the address so stated or at any such substituted address as hereinafter mentioned, whether the person to whom the notice is sent is living or not.

Service of
notices.

J. A., O. 46, r. 5. Cf. O. 67, r. 3.

7. The address so stated may, from time to time, be altered by the person by or on whose behalf the affidavit is filed, but no notice sent by post before the alteration to the address originally given or for the time being substituted therefor shall be affected by any subsequent alteration. Any such alteration of address may be made by service of a memorandum thereof on the company in the manner required for service of a notice under this order.

Alteration
of address.

J. A., O. 46, r. 6.

8. The service of the office copy of the affidavit and of the duplicate of the filed notice shall have the same force and effect against the company as a writ of distringas duly issued under the Act 5 Vict. c. 5, s. 5, *would have*

To have
same
effect as a
writ of dis-
tringas.

RULES OF THE SUPREME COURT.

Order XLVI.

had against the Bank of England if these Rules had not been made.

J. A., O. 46, r. 7. See r. 3.

With- drawal of notice.

9. A notice filed under Rule 4 of this Order may at any time be withdrawn by the person by whom or on whose behalf it was given on a written request signed by him, or its operation may be made to cease by an order to be obtained by motion on notice or by petition or by summons at chambers duly served by any other person claiming to be interested in the stock sought to be affected by the notice.

J. A., O. 46, r. 9. See r. 4.

Request for trans- fer or to pay divi- dends, effect of.

10. If, whilst a notice filed under Rule 4 of this Order continues in force, the company on whom it is served receive from the person in whose name the stock specified in the notice is standing, or from some person acting on his behalf or representing him, a request to permit the stock to be transferred or to pay the dividends thereon, the company shall not, by force or in consequence of the service of the notice, be authorised, without the order of the Court or a judge, to refuse to permit the transfer to be made or to withhold the payment of the dividends for more than eight days after the date of the request.

J. A., O. 46, r. 10.

Correction of descrip- tion of stock.

11. If the person who files a notice under Rule 4 of this Order desires to correct the description of the stock referred to in the filed notice, he may file an amended notice and serve on the company a duplicate thereof sealed with the seal of the Central Office, and in that case the service of the notice shall be deemed to have been made on the day on which the amended duplicate is so served.

J. A., O. 46, r. 11.

Costs occa- sioned by obtaining order to prevent transfer.

*12. Where any moneys or securities are in Court to the general credit of any cause or matter, or to the account of any class of persons, and an order is made to prevent the transfer or payment of such moneys or securities, or any part thereof, without notice to the assignee of any person entitled in expectancy or otherwise to any share or portion of such moneys or securities, the person by whom any such order shall be obtained on the shares of such moneys or securities affected by such order shall be liable, at the

RULES OF THE SUPREME COURT.

discretion of the Court or a judge, to pay any costs, charges, and expenses which, by reason of any such order having been obtained, shall be occasioned to any party to the cause or matter, or any persons interested in any such moneys or securities.

Order
XLVI.

Cons. O. 26, r. 1. *Waddilove v. Taylor*, 6 Ha. 307 ; *Edwards v. Grove*, 29 L. J. Ch. 839.

*13. Any person presenting a petition or taking out a summons for any such order as aforesaid shall not be required to serve such petition or summons upon the parties to the cause *or matter*, or upon the persons interested in such parts of the moneys or securities as are not sought to be affected by any such order.

Service on
parties not
affected by
order.

Cons. O. 26, r. 2. See Daniel's Ch. Pr., ed. 5, p. 1540. In respect of a judgment ordering payment at a future date, a charging order can be obtained at once : *Bagnall v. Carlton*, 6 Ch. D. 130. It operates from the date of the order nisi : *Haly v. Barry*, L. R. 3 Ch. 452.

ORDER XLVII.

Order
XLVII.

WRIT OF POSSESSION.

1. A judgment or order that a party do recover possession of any land may be enforced by writ of possession in manner before the commencement of the Principal Act used in actions of ejectment in the Superior Courts of Common Law.

On judg-
ment to
recover
land.

J. A., O. 48, r. 1. *Hall v. Hall*, 47 L. J. Ch. 680. See p. 272.

2. Where by any judgment *or order* any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment *or order* shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment or order and that the same has not been obeyed.

Affidavit
in support.

J. A., O. 48, r. 2. This used to be supplemented by a writ of assistance : *Morgan*, p. 589.

*3. Upon any judgment or order for the recovery of any land and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs at the election of the successful party.

Separate
writs may
be issued.

C. I. P. Act, 1852, s. 187.

RULES OF THE SUPREME COURT.

Order XLVIII.

ORDER XLVIII.

WRIT OF DELIVERY.

Of property other than land or money.

1. Where it is sought to enforce a judgment or order for the recovery of any property other than land or money by writ of delivery, the Court or a judge may, upon the application of the plaintiff, order that execution shall issue for the delivery of the property, without giving the defendant the option of retaining the property, upon paying the value assessed, if any, and that if the property cannot be found, and unless the Court or a judge shall otherwise order, the sheriff shall distrain the defendant by all his lands and chattels in the sheriff's bailiwick, till the defendant deliver the property; or at the option of the plaintiff, that the sheriff cause to be made of the defendant's goods the assessed value, if any, of the property.

C. L. P. Act, 1854, s. 78. See p. 261.

Form of.

*2. A writ of delivery shall be in the Form No 10 in Appendix H. ; and when a writ of delivery is issued, the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages and costs awarded, and interest.

See, too, J. A., App. F. No. 8.

Order XLIX.

ORDER XLIX.

TRANSFERS AND CONSOLIDATION.

By order of Lord Chancellor.

1. Causes or matters may be transferred from one Division to another of the High Court or from one judge to another of the Chancery Division by an order of the Lord Chancellor, provided that no transfer shall be made from or to any Division without the consent of the President of the Division.

J. A., O. 51, r. 1. See p. 202. *Re Boyd's Trusts*, 1 Ch. D. 12.

Of Chancery matter for hearing only.

2. In the Chancery Division a transfer of a cause or matter from one judge to another may by the same or a separate order be ordered to be made or to be deemed to have been made for the purpose only of hearing or of trial,

RULES OF THE SUPREME COURT.

**Order
XLIX.**

and in such case the original and any further hearing shall take place before the judge to whom the cause *or matter* shall be so transferred ; but all other proceedings therein, whether before or after the hearing or trial of the cause *or matter*, shall be taken and prosecuted in the same manner as if such cause or matter had not been transferred from the judge to whom it was assigned at the time of transfer, and as if such judge *had given* or made the judgment *or order*, if any, therein, unless the judge to whom the cause *or matter* is transferred shall direct that any further proceedings therein, before or after the hearing or trial thereof, shall be taken and prosecuted before himself or before an Official Referee or special referee.

J. A., O. 51, r. 1a. As to interlocutory applications, *Lloyd v. Jones*, 7 Ch. D. 390.

3. Any *cause or matter* may, at any stage, be transferred from one Division to another by an order made by the Court or any judge of the Division to which the *cause or matter* is assigned : Provided that no such transfer shall be made without the consent of the President of the Division to which the cause or matter is proposed to be transferred.

Consent of
President
of Divi-
sion.

J. A., O. 51, r. 2. *Storey v. Waddle*, 4 Q. B. D. 289.

*4. A particular application in any cause or matter may by the direction of the Lord Chancellor be heard and disposed of by any judge of the High Court who shall consent so to do, to whatever Division or judge such cause or matter may have been assigned.

Particular
applica-
tions.

5. When an order has been made by any judge of the Chancery Division for the winding-up of any company, or for the administration of the assets of any testator or intestate, the judge in whose Court such winding-up or administration shall be pending shall have power, without any further consent, to order the transfer to such judge of any *cause or matter* pending in any other Court or Division brought or continued by or against such company, or by or against the executors or administrators of the testator or intestate whose assets are being so administered, as the case may be.

After
winding-
up or
adminis-
tration
order.

J. A., O. 51, r. 2a. In re *Madras Irrigation and Canal Co.*, 15 Ch. D. 702, and p. 204.

*6. When any summons under Order 55, Rules 3 and 4, shall have been marked with the name of a judge other

Summons
improperly
marked.

RULES OF THE SUPREME COURT.

Order XLIX

than the judge by Rule 11 of the same Order prescribed, such last-mentioned judge shall, unless cause shall appear to him to the contrary, without any further consent, order the transfer to such judge of the summons so improperly marked.

See O. 55, rr. 3 and 4.

Order shall
specify
judge.

7. Any *cause or matter* transferred from any other Division to the Chancery Division, shall, by the order directing the transfer, be assigned to one of the judges of that Division to be named in the order.

J. A., O. 51, r. 3. Cf. O. 5, r. 9.

Consolida-
tion.

8. *Causes or matters pending in the same* Division may be consolidated by order of the Court or a judge in the manner in use before the commencement of the Principal Act in the Superior Courts of Common Law.

J. A., O. 51, r. 4. *The Halenslea*, 7 P. D. 57.

Order L.

ORDER L.

I. INTERLOCUTORY ORDERS AS TO MANDAMUS INJUNCTIONS OR INTERIM PRESERVATION OF PROPERTY, &c.

Order for
preserva-
tion of
property.

1. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

J. A., O. 52, r. 1. *Russell v. Davies*, W. N. 1883, 109. See p. 111 and p. 251.

Perishable
goods.

2. It shall be lawful for the Court or a judge, on the application of any party, to make any order for the sale, by any person or persons named in such order, and in such manner, and on such terms as the Court or judge may think desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

J. A., O. 52, r. 2.

Order for
detention.

3. It shall be lawful for the Court or a judge, upon the application of any party to a cause or matter, and upon

RULES OF THE SUPREME COURT.

such terms as may be just, to make any order for the detention, preservation, or inspection of any property or thing, being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid to authorise any persons to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid to authorise any samples to be taken, or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

Order L.

Inspection.

Entry.

Samples.

J. A., O. 52, r. 3. Jewellery ordered to be detained in *Velate v. Braham*, 46 L. J. C. P. 415; and mines ordered to be inspected, *Cooper v. Ince Hall Co.*, W. N. 1876, 24.

*4. It shall be lawful for any judge, by whom any cause or matter may be heard or tried with or without a jury, or before whom any cause or matter may be brought by way of appeal, to inspect any property or thing concerning which any question may arise therein.

Judge may inspect.

*5. The provisions of Rule 3 of this Order shall apply to inspection by a jury, and in such case the Court or a judge may make all such orders upon the sheriff or other person as may be necessary to procure the attendance of a special or common jury at such time and place, and in such manner as they or he may think fit.

Inspection by jury.

Special jury.

C. L. P. Act, 1854, s. 59.

6. An application for an order under section 25, sub-section 8, of the Principal Act, or under Rules 2 or 3 of this Order, may be made to the Court or a judge by any party. If the application be by the plaintiff for an order under the said sub-section 8 it may be made either ex parte or with notice, and if for an order under Rules 2 or 3 of this Order it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application.

Applications for orders under rr. 2 and 3.

J. A., O. 52, r. 4. The doubts as to the law of *Paris Skating Rink Co.*, 6 Ch. D. 731, in *Glossop v. Heston Local Board*, 12 Ch. D. 115, and p. 122, are now done away with.

7. An application for an order under Rule 1 of this Order may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court or a judge.

Application under r. 1.

J. A., O. 52, r. 5.

RULES OF THE SUPREME COURT.

- Order L.** 8. Where an action is brought to recover, or a defendant in his defence seeks by way of counterclaim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or judge may direct, and that, upon such payment into Court being made, the property claimed be given up to the party claiming it.
- When lien claimed, on payment into Court of sum claimed property to be given up.**
- J. A., O. 52, r. 6.
- Income of property during proceedings.** *9. Where any real or personal estate forms the subject of any proceedings in the Chancery Division, and the judge is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the judge may at any time after the commencement of the proceedings, allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of the real estate or a part of the personal estate, or the whole or part of the income thereof, up to such time as the judge shall direct.
- Ch. Procedure Act, 1852, s. 57.
- Administration.** 10. Whenever in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered of any property vested in any *executor*, *administrator*, or trustee, the conduct of such sale shall be given to such *executor*, *administrator*, or trustee, unless the Court or a judge shall otherwise direct.
- Conduct of sale.**
- J. A., O. 52, r. 6a. R. S. C., March, 1879.
- No writ of injunction.** 11. No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction previously had.
- J. A., O. 52, r. 8. R. S. C., April, 1880.
- Injunction to restrain** *12. In any cause or matter in which an injunction has been, or might have been claimed, the plaintiff may, before

RULES OF THE SUPREME COURT.

or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the Court or a judge may grant the injunction, either upon or without terms, as may be just.

Order L.

continu-
ance of
wrongful
act.

Cf. C. L. P. Act, 1854, s. 79.

*13. Leave to compound a penal action shall not be given in cases where part of the penalty goes to the Crown, unless notice shall first have been given to the proper officer; but in other cases it may be given without notice to any officer.

Leave to
compound
penal
action.

R. G. H. T., 1853, 118. This has nothing to do with compounding a felony, as to which see p. 19.

*14. *The order to compound a penal action* shall expressly state that the defendant undertakes to pay the sum for which the Court has given him leave to compound the action.

Order to
compound.

R. G. H. T., 1853, 119.

*15. When leave is given to compound a penal action, where part of the penalty goes to the Crown, the Queen's half of the composition shall be paid into the hands of the Master of the Crown Office Department of the Central Office for the use of Her Majesty.

Crown's
portion of
penalty.

R. G. H. T., 120.

II. RECEIVERS.

*16. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be allowed by the Court or a judge and taken before a person authorised to administer oaths, duly to account for what he shall receive as *such receiver*, and to pay the same as the Court or judge shall direct; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. Such security shall be by recognizance in the Form No. 21 in Appendix L., unless the Court or a judge shall otherwise order.

Security of
receiver.

Salary.

Cons. O. 24, r. 1. See p. 252.

*17. Where any judgment or order is pronounced or made in Court appointing a person therein named to be receiver, the Court or a judge may adjourn to chambers the cause or matter then pending, in order that the person

Adjourn-
ment into
chambers
for re-
ceiver to

RULES OF THE SUPREME COURT.

Order L. named as receiver may give security as in the last preceding Rule mentioned, and may thereupon direct such judgment or order to be drawn up.

give security.

See O. 55, r. 29.

Court to fix time to pass accounts.

Penalties of neglect.

Disallowance of salary.

*18. When a receiver is appointed with a direction that he shall pass accounts, the Court or judge shall fix the days upon which he shall (annually, or at longer or shorter periods,) leave and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so left, or such part thereof as shall be certified as proper to be paid by him. And with respect to any such receiver as shall neglect to leave and pass his accounts and pay the balances thereof at the times so to be fixed for that purpose as aforesaid, the judge before whom any such receiver is to account may from time to time, when his subsequent accounts are produced to be examined and passed, disallow the salary therein claimed by such receiver, and may also, if he shall think fit, charge him with interest at the rate of £5 per cent. per annum upon the balances so neglected to be paid by him during the time the same shall appear to have remained in the hands of any such receiver.

Cons. O. 24, r. 2.

Form of accounts.

Accounts and affidavit verifying.

*19. Receivers' accounts shall be in the Form No. 14 in Appendix L., with such variations as circumstances may require.

*20. Every receiver shall leave in the chambers of the judge to whom the cause or matter is assigned his account, together with an affidavit verifying the same in the Form No. 22 in Appendix L., with such variations as circumstances may require. An appointment shall thereupon be obtained by the plaintiff or person having the conduct of the cause for the purpose of passing such account.

Compare Cons. O. 24, r. 3.

Failing to leave account.

*21. In case of any receiver failing to leave any account or affidavit, or to pass such account, or to make any payment, or otherwise, the receiver or the parties, or any of them, may be required to attend at chambers to show cause why such account or affidavit has not been left, or such account passed, or such payment made, or any other proper proceeding taken, and thereupon such directions as shall be proper may be given at chambers or by adjourn-

RULES OF THE SUPREME COURT.

or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the Court or a judge may grant the injunction, either upon or without terms, as may be just.

Order L.

continu-
ance of
wrongful
act.

Cf. C. L. P. Act, 1854, s. 79.

*13. Leave to compound a penal action shall not be given in cases where part of the penalty goes to the Crown, unless notice shall first have been given to the proper officer; but in other cases it may be given without notice to any officer.

Leave to
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penal
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Order to
compound.

R. G. H. T., 1853, 119.

*15. When leave is given to compound a penal action, where part of the penalty goes to the Crown, the Queen's half of the composition shall be paid into the hands of the Master of the Crown Office Department of the Central Office for the use of Her Majesty.

Crown's
portion of
penalty.

R. G. H. T., 120.

II. RECEIVERS.

*16. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be allowed *by the Court* or a judge and taken before a person authorised to administer oaths, duly to account for what he shall receive *as such receiver*, and to pay the same as the Court or judge shall direct; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. Such security shall be by recognizance in the Form No. 21 in Appendix L., unless the Court or a judge shall otherwise order.

Security of
receiver.

Salary.

Cons. O. 24, r. 1. See p. 252.

*17. Where any judgment or order is pronounced or in Court appointing a person therein named to be, the Court or a judge may adjourn to chambers or matter then pending, in order that the person

Adjourn-
ment into
chambers
for re-
ceiver to

RULES OF THE SUPREME COURT.

Order L. 8. Where an action is brought to recover, or a defendant in his defence seeks by way of counterclaim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or judge may direct, and that, upon such payment into Court being made, the property claimed be given up to the party claiming it.

J. A., O. 52, r. 6.

Income of property during proceedings. *9. Where any real or personal estate forms the subject of any proceedings in the Chancery Division, and the judge is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the judge may at any time after the commencement of the proceedings, allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of the real estate or a part of the personal estate, or the whole or part of the income thereof, up to such time as the judge shall direct.

Ch. Procedure Act, 1852, s. 57.

Administration. 10. Whenever in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered of any property vested in any *executor, administrator, or trustee*, the conduct of such sale shall be given to such *executor, administrator, or trustee*, unless the Court or a judge shall otherwise direct.

Conduct of sale.

J. A., O. 52, r. 6a. R. S. C., March, 1879.

No writ of injunction. 11. No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction previously had.

J. A., O. 52, r. 8. R. S. C., April, 1880.

Injunction to restrain *12. In any cause or matter in which an injunction has been, or might have been claimed, the plaintiff may apply to the Court or a judge for an order that the defendant do not do any act which would be likely to prejudice the plaintiff's case.

J. A., O. 52, r. 9. R. S. C., April, 1880.

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or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the Court or a judge may grant the injunction, either upon or without terms, as may be just.

Order L.

continu-
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Cf. C. L. P. Act, 1854, s. 79.

*13. Leave to compound a penal action shall not be given in cases where part of the penalty goes to the Crown, unless notice shall first have been given to the proper officer; but in other cases it may be given without notice to any officer.

Leave to
compound
penal
action.

R. G. H. T., 1853, 118. This has nothing to do with compounding a felony, as to which see p. 19.

*14. *The order to compound a penal action* shall expressly state that the defendant undertakes to pay the sum for which the Court has given him leave to compound the action.

Order to
compound.

R. G. H. T., 1853, 119.

*15. When leave is given to compound a penal action, where part of the penalty goes to the Crown, the Queen's half of the composition shall be paid into the hands of the Master of the Crown Office Department of the Central Office for the use of Her Majesty.

Crown's
portion of
penalty.

R. G. H. T., 120.

II. RECEIVERS.

*16. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be allowed by the Court or a judge and taken before a person authorised to administer oaths, duly to account for what he shall receive as such receiver, and to pay the same as the Court or judge shall direct; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. Such security shall be by recognizance in the Form No. 21 in Appendix L., unless the Court or a judge shall otherwise order.

Security of
receiver.

Salary.

Cons. O. 24, r. 1. See p. 252.

*17. Where any judgment or order is pronounced or made in Court appointing a person therein named to be receiver, the Court or a judge may adjourn to chambers for use or matter then pending, in order that the person

Adjourn-
ment into
chambers
for re-
ceiver to

RULES OF THE SUPREME COURT.

Order LI. 13. *The judge* may, if he thinks fit, direct or transfer a reference to any one in particular of the Conveyancing Counsel of the Court.
Power of judge to choose. Cf. Cons. O. 2, r. 5.

III. IN ADMIRALTY ACTIONS.

14. Every commission for the appraisement or sale of property under the order of the Court shall, unless the Court or a judge shall otherwise order, be executed by the Marshal or his substitutes.

15. The Marshal shall pay into Court the gross proceeds of sale of any property which shall have been sold by him, and shall at the same time bring into the Registry the account of sale, with vouchers in support thereof, for taxation by the Admiralty Registrar.

16. Any person interested in the proceeds may be heard before the Admiralty Registrar on the taxation of the Marshal's account of expenses, and an objection to the taxation shall be heard in the same manner as an objection to the taxation of a solicitor's bill of costs.

No notes upon Admiralty Practice are to be looked for in this book.

Order LII.

ORDER LII.

MOTIONS AND OTHER APPLICATIONS.

Motion. 1. Where by these Rules any application is authorised to be made to the Court or a judge [in an action], such application, if made to a Divisional Court or to a judge in Court, shall be made by motion.
Firm of application to Court.

The words in brackets are not in the new Rules. J. A., O. 53, r. 1. To judge in chambers by summons, see p. 247.

Rule nisi abolished, in what cases. *2. No motion or application for a rule nisi or order to show cause shall hereafter be made (1) in any action, or (2) to set aside, remit, or enforce an award, or (3) for attachment, or (4) to answer the matters in an affidavit, or (5) to strike off the rolls, or (6) against a sheriff to pay money levied under an execution.

This is one of the important alterations in practice effected by the new Rules. Notice will now be necessary, see *Delmar v. Freemantle*, 3 Exch. D. 237, and *Re A Solicitor*, W. N. 1880, 36.

Notice of motion. 3. Except where *according to* the practice existing at the time of the passing of the Principal Act any order or

RULES OF THE SUPREME COURT.

rule *might* be made absolute ex parte in the first instance, and except where *notwithstanding* Rule 2 a motion or application may be made for an order to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the Court or a judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order ex parte upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or judge may think just; and any party affected by such order may move to set it aside.

Order LII.

Ex parte applications.

J. A., O. 53, r. 3. See p. 8. See Wilson, p. 299. See Cons. O. 33, r. 1; Cons. O. 40, rr. 23 and 37.

*4. Every notice of motion to set aside, remit, or enforce an award, or for attachment, or to strike off the rolls, shall state in general terms the grounds of the application; and, where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.

Grounds when to be stated.

5. Unless the Court or a judge give special leave to the contrary there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion: *provided that in applications to answer the matters in an affidavit or to strike off the rolls, the notice of motion shall be served on the parties not less than ten clear days before the time fixed by the notice for making the motion.

Length of notice generally.

In applications against solicitors.

J. A., O. 53, r. 4.

6. If on the hearing of a motion or other application the Court or a judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or judge may think fit to impose.

When a party not served ought to have had notice.

J. A., O. 53, r. 5. See O. 55, r. 6.

7. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or judge shall think fit.

Adjournments.

J. A., O. 53, r. 6.

8. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice or defendant

Where a defendant

RULES OF THE SUPREME COURT.

- Order LII.** any petition or summons upon any defendant, who, having been duly served with a writ of summons to appear, has not appeared within the time limited for that purpose.
 has not appeared and time for appearance has gone by. J. A., O. 53, r. 7. As to filing, see *Whitaker v. Thurston*, W. N. 1876, 232.
 Service by leave before time has gone by. 9. The plaintiff may, by leave of the Court or a judge to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant.
 J. A., O. 53, r. 8. See p. 8.
- *10. In Admiralty actions, notice of motion together with the affidavits (if any) in support thereof, shall be filed in the Admiralty Registry three days at least before the hearing of the motion unless leave shall be given to the contrary; and a copy of the notice of motion and of the affidavits (if any) shall be served on the adverse solicitor before the originals are filed.
- Notice to sheriff to return writ of committal or bring the body. *11. No order shall issue for the return of any writ, or to bring in the body of a person ordered to be attached or committed; but a notice from the person issuing the writ or obtaining the order for attachment or committal (if not represented by a solicitor), or by his solicitor, calling upon the sheriff to return such writ or to bring in the body within a given time, if not complied with, shall entitle such person to apply for an order for the committal of such sheriff.
 See R. G. H. T., 1853, 89, 90.
- When sheriff has just gone out of office. *12. When any sheriff shall, before going out of office, arrest any defendant, and render return of *cepi corpus*, he may be called upon *by a notice*, as provided by the last preceding Rule, to bring in the body *within the time allowed by law*, although he may be out of office before such notice is given.
 R. G. H. T., 1853, 133.
- Date of order. *13. Every order, if and when drawn up, shall be dated the day of the week, month, and year on which the same was made, unless the Court or a judge shall otherwise direct, and shall take effect accordingly.
 Cf. Cons. O. 23, r. 10. Cf. of pleadings, C. L. P. Act, 1852, s. 54.
- Order enlarging time. *14. Where an order has been made not embodying any special terms, nor including any special directions, but simply enlarging time (1) for taking any proceed-

RULES OF THE SUPREME COURT.

ing or (2) doing any act or (3) giving leave (a) for the issue of any writ other than a writ of attachment, (b) for the amendment of any writ or pleadings, (c) for the filing of any document, or (d) for any act to be done by any officer of the Court other than a solicitor, it shall not be necessary to draw up such order unless the Court or a judge shall otherwise direct; but the production of a note or memorandum of such order, signed by a judge, Registrar, Master, Chief Clerk, or District Registrar, shall be sufficient authority for such enlargement of time, issue, amendment, filing, or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this Rule. The solicitor of the person on whose application such order is made, shall forthwith give notice in writing thereof to such person (if any) as would, if this Rule had not been made, have been required to be served with such order.

Order LII.

Not to be drawn up.

Direction as to costs.

This Rule is important.

*15. It shall not be necessary to obtain an order to enter a judgment or order nunc pro tunc, but in all cases in which such entries were formerly made under orders of course, the solicitor applying to have a judgment or order so entered, shall leave with the clerk of entries a memorandum in writing countersigned by the Chancery Registrar, and bearing a stamp according to the scale of Court fees for the time being in force.

Order nunc pro tunc.

*16. At the foot of every petition (not being a petition of course) presented to *the Court*, and of every copy thereof, a statement shall be made of the persons, if any, intended to be served therewith, and if no person is intended to be served, a statement to that effect shall be made at the foot of the petition and of every copy thereof.

Petition to be marked with persons' names upon whom it is to be served.

Cons. O. 34, r. 1. See Morgan, p. 600.

*17. Unless the Court or a judge gives leave to the contrary, there must be at least two clear days between the service and the day appointed for hearing a petition.

Two days' notice

Cons. O. 34, r. 2.

*18. In the case of applications under Acts of Parliament directing the purchase money of any property sold to be paid into Court, any persons claiming to be entitled to the money so paid in must make an affidavit not only verifying their title, but also stating that they

Payment out. Affidavit of persons seeking.

RULES OF THE SUPREME COURT.

Order LII. are not aware of any right in any other person, or of any claim made by any other person, to the sum claimed, or to any part thereof, or, if the petitioners are aware of any such right or claim, they must in such affidavit state or refer to and except the same.

Cf. Cons. O. 34, r. 3.

Title of
applica-
tion
when
judge's
opinion
desired.

*19. All petitions, summonses, statements, affidavits, and other written proceedings for the opinion, advice, or direction of a judge under the 30th section of the Act 22 & 23 Vict. c. 35, shall be intituled in the matter of that Act, and in the matter of the particular trust, will, or administration, and every such petition or statement shall state the facts concisely, and shall be divided into paragraphs numbered consecutively.

See Order of Court, March 20, 1860, r. 1. *Re Miles*, 27 Beav. 579.

Statement
on which
grounded.

*20. At the time when any such summons, as in the last preceding Rule mentioned, is sealed, the statement upon which the same is grounded shall be left at the chambers of the judge to whom the same is assigned, and shall on the conclusion of the proceeding be transmitted to the Chancery Registrar by the Chief Clerk, with the minutes of the opinion, advice, or direction given by the judge, and the Registrar shall cause such statement to be transmitted to the *Central Office*, to be there filed.

Same Order, r. 2.

Service.

*21. Every such petition or summons as in Rule 19 mentioned, shall be served seven clear days before the hearing thereof, unless the person served shall consent to a shorter time.

Same Order, r. 3.

Opinion of
judge, how
passed, &c.

*22. The opinion, advice, or direction of the judge, as in Rule 19 mentioned, shall be passed and entered and remain as of record in the same manner as any order made by the Court or a judge, and the same shall be termed "a judicial opinion," or "judicial advice," or "judicial direction," as the case may be.

Same Order, r. 4. *Morgan*, p. 254.

Agree-
ments in
Admi-
ralty.

*23. Any agreement in writing between the solicitors in Admiralty actions, dated and signed by the solicitors of both parties, may, if the Admiralty Registrar think it reasonable and such as the judge would under the circum-

RULES OF THE SUPREME COURT.

stances allow, be filed, and shall thereupon become an order of Court, and have the same effect as if such order had been made by the judge in person. **Order LII.**

ORDER LIII.

**Order
LIII.**

*I. ACTION OF MANDAMUS.

See Wilson's Jud. Acts, ed. 3, p. 80, and Day, ed. 2, p. 245.

1. The plaintiff, in any action in which he shall claim a mandamus to command the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested, shall indorse such claim upon the writ of summons. **Must be indorsed on writ.**

See p. 241. As to the indorsing of claims on writs, see *Colebourne v. Colebourne*, 1 Ch. D. 690.

2. The indorsement shall be in the Form given in Section IV. of Appendix A., Part III. **Form of indorsement.**

3. If judgment be given for the plaintiff the Court or judge may by the judgment command the defendant either forthwith, or on the expiration of such time and upon such terms as may appear to the Court or a judge to be just, to perform the duty in question. The Court or a judge may also extend the time for the performance of the duty. **Judgment may fix time for performance of duty claimed.**

4. No writ of mandamus shall hereafter be issued in an action, but a mandamus shall be by judgment or order, which shall have the same effect as a writ of mandamus formerly had. **Power of extension. Abolition of writs of.**

The institution of the action for a mandamus is not new. The writ of injunction is done away with also. O. 50, r. 11.

II. PREROGATIVE MANDAMUS.

5. Application for a prerogative writ of mandamus shall be made in the Queen's Bench Division, according to the practice heretofore in use. **Applications for.**

See Bacon's Abr., tit. Mandamus. C. L. P. Act, 1854, s. 75.

6. The Court or a judge may, if they or he think fit, order that any writ of mandamus shall be peremptory in the first instance. **Power of Court to make peremptory.**

Cf. C. L. P. Act, 1854, ss. 70 and 76. This used generally to be granted only when the return was insufficient or falsified in an action on the case.

RULES OF THE SUPREME COURT.

<p>Order LIII.</p> <hr/> <p>Teste, when re- turnable. Form.</p>	<p>7. Every writ of mandamus shall bear date on the day when it is issued, and shall be tested in the name of the Lord Chief Justice of England. The writ may be made returnable forthwith, or time may be allowed to return it, either with or without terms, as the Court thinks fit. A writ of mandamus shall be in the Form No. 12 in Appendix J., with such variations as circumstances may require.</p> <p style="text-align: center;">Even in vacation : C. L. P. Act, 1854, s. 76.</p>
<p>Return may be made to first writ. Pleading to.</p>	<p>8. Any person by law compellable to make any return to a writ of mandamus shall make his return to the first writ.</p> <p>9. When any return is made to a writ of mandamus, other than an unconditional compliance therewith, the applicant may plead to the return within such time and in like manner as if the return were a statement of defence delivered in an action ; and, subject to these Rules, this pleading and all subsequent proceedings, including pleadings, trial, judgment, and execution, shall proceed and may be had and taken as if in an action.</p>
<p>Points of law.</p>	<p>10. Where a point of law is raised in answer to a return or any other pleading in mandamus, and there is no issue of fact to be decided, the Court shall, on the argument of the point of law give judgment for the successful party, without any motion for judgment being made or required.</p>
<p>Judgment.</p>	<p>11. Where, under Rules 9 and 10, the applicant obtains judgment he shall be entitled forthwith to a peremptory writ of mandamus to enforce the command contained in the original writ, and the judgment shall direct that a peremptory writ do issue.</p> <p style="text-align: center;">Compare C. L. P. Act, 1854, s. 71.</p>
<p>No action to be in respect of anything done under.</p>	<p>12. No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to a writ of mandamus issued by the Supreme Court or any judge thereof.</p>
<p>Conduct by persons interested.</p>	<p>13. When it appears to the Court that the respondent claims no right or interest in the subject-matter of the application, or that his functions are merely ministerial, the return to the writ, and all subsequent proceedings down to judgment, shall still be made and proceed in the name of the person to whom the writ is directed, but if the Court thinks fit so to order, may be expressed to be made on behalf of the persons really interested therein. In that case the persons interested shall be permitted to frame the return and conduct the subsequent proceedings</p>

RULES OF THE SUPREME COURT.

at their own expense; and if judgment is given for or against the applicant it shall likewise be given for or against the persons on whose behalf the return is expressed to be made; and if judgment is given for them, they shall have the same remedies for enforcing it as the person to whom the writ is directed would have in other cases.

**Order
LIII**

14. Where, under the last preceding Rule, the return to a writ of mandamus is expressed to be made on behalf of some persons other than the person to whom the writ is directed, the proceedings on the writ shall not abate by reason of the death, resignation, or removal from office of that person, but they may be continued and carried on in his name; and if a peremptory writ is awarded, it shall be directed to the successor in office or right of that person.

When no
abatement
by death,
&c.

15. The provisions of Order 42, Rule 24, and of the Orders mentioned in Order 68, Rule 2, shall apply to mandamus, and in any case of mandamus in which a proceeding by way of interpleader may be proper, the provisions of Order 57 shall be applicable, so far as the nature of the case will admit.

O. 42,
r. 24, and
O. 68, r. 2,
applicable.

ORDER LIV.

Order LIV

APPLICATIONS AND PROCEEDINGS AT CHAMBERS.

I. GENERAL.

1. Every application at chambers *not made ex parte* shall be made by summons.

Not ex
parte.

J. A., O. 54, r. 1. See J. A., 1873, s. 39; and see p. 83.

How
made.

*2. Every application for payment or transfer out of Court made *ex parte*, and every other application made *ex parte* in which the judge or proper officer shall think fit so to require, shall be made by summons.

Ex parte.

This Rule is new. See p. 83, and 15 & 16 Vict. c. 80, s. 26, and Cons. O. 35.

*3. Summonses shall not be altered after they are sealed except upon application at chambers.

Alteration in
summons.

See Regulations of Aug. 8, 1857, r. 1. See p. 83.

*4. An originating summons, where service is necessary, shall be served seven clear days before the return thereof.

Originating
summons.

RULES OF THE SUPREME COURT.

Order LIV. Every other summons shall be served two clear days before the return thereof, unless in any case it shall be otherwise ordered.
Service.

Cf. Cons. O. 35, r. 7. See O. 5, rr. 10—12, inclusive, and O. 55, r. 20.

In case of failure to attend, judge may proceed ex parte.

*5. Where any of the parties to a summons fail to attend, whether upon the return of the summons, or at any time appointed for the consideration or further consideration of the matter, the judge may proceed ex parte, if, considering the nature of the case, he think it expedient so to do; *no affidavit of non-attendance shall be required or allowed, but the judge may require such evidence of service as he may think just.

Cons. O. 35, r. 10. *Part of this Order is new.* As to evidence of service, cf. O. 13, r. 2, and also p. 105.

Ex parte proceedings shall not be reconsidered in chambers.

Exception. Costs.

*6. Where the judge has proceeded ex parte, such proceeding shall not in any manner be reconsidered in the judge's chambers, unless the judge shall be satisfied that the party failing to attend was not guilty of wilful delay or negligence; and in such case the costs occasioned by his non-attendance shall be in the discretion of the judge, who may fix the same at the time, and direct them to be paid by the party or his solicitor before he shall be permitted to have such proceeding reconsidered, or make such other order as to such costs as he may think just.

Cons. O. 35, r. 11. Cf. p. 105, as to consequences to non-appearance to a writ of summons.

Ex parte proceedings. Costs.

*7. Where a proceeding in chambers fails by reason of the non-attendance of any party, and the judge does not think it expedient to proceed ex parte, the judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the absent party or by his solicitor personally.

This Rule is new. Cf. O. 65, r. 5.

Further consideration.

*8. Where matters in respect of which summonses have been issued are not disposed of upon the return of the summons, the parties shall attend from time to time without further summons, at such time or times as may be appointed for the consideration or further consideration of the matter.

Cons. O. 35, r. 14. See also Regulations of August 3, 1857, No. 18; *Re Cattlin*, 18 Beav. 512.

RULES OF THE SUPREME COURT.

*9. In every cause or matter where any party thereto makes any application at chambers, either by way of summons or otherwise, he shall be at liberty to include in one and the same application all matters upon which he then desires the order or directions of the Court or judge; and upon the hearing of such application it shall be lawful for the Court or judge to make any order and give any directions relative to or consequential on the matter of such application as may be just; any such application may, if the judge thinks fit, be adjourned from chambers into Court, or from Court into chambers.

Order LIV.

Summons
for direc-
tions.

This Rule is new. Compare the practice under the summons for directions; and see O. 55, r. 8.

10. A summons *other than an originating summons* shall be in the Form No. 1 in Appendix K., with such variations as circumstances may require, and shall be addressed to all the persons on whom it is to be served.

Form of
summons.

See J. A., O. 54, r. 8. Cf. as to petitions, O. 52, r. 16.

I. QUEEN'S BENCH AND PROBATE, DIVORCE AND ADMIRALTY DIVISIONS.

*11. In all cases of applications originating in chambers, a summons shall be prepared by the applicant or his solicitor, and shall be sealed in the Central Office, and in Admiralty actions in the Admiralty Registry, and when so sealed shall be deemed to be issued. The person obtaining a summons shall leave at the Central Office or Admiralty Registry, as the case may be, a copy thereof, which shall be filed, and stamped in the manner required by law.

Applica-
tions origi-
nating in
chambers.

Cf. O. 55, r. 20.

12. In the Queen's Bench Division a Master, and in the Probate, Divorce and Admiralty Division a Registrar, may transact all such business and exercise all such authority and jurisdiction in respect of the same, as under the Acts or these Rules may be transacted or exercised by a judge at chambers, except in respect of the following proceedings and matters; that is to say,—

What
Masters
and Regis-
trars may
do.

(a.) All matters relating to criminal proceedings or to the liberty of the subject;

Excep-
tions.

*(b.) Granting leave for service out of the jurisdiction of a writ, or notice of a writ, of summons;

This provision is new. For the practice in Chancery, see p. 149.

RULES OF THE SUPREME COURT.

Order LIV.

- (c.) The removal of actions from one Division or judge to another Division or judge ;
- (d.) The settlement of issues, except by consent ;
- * (e.) Inspection and other orders under Order 50, Rules 1 to 5 ;
- (f.) Appeals from District Registrars ;
- (g.) Prohibitions ;
- (h.) Injunctions and other orders under sub-section 8 of section 25 of the Principal Act ;
- (i.) Awarding of costs, other than the costs of or relating to any proceeding before a Master, **or Registrar*, and other than any costs which by these Rules, or by the order of the Court or a judge, he is authorised to award ;

The Registrar in the Probate and Admiralty Division.

- (k.) Reviewing taxation of costs ;
- (l.) Orders absolute for charging stocks, funds, annuities, or share of dividends, or annual proceeds thereof ;
- (m.) Acknowledgments of married women.

J. A., O. 54, r. 2. Note extension of powers given. O. 35, r. 6.

Rota of Masters.

*13. Six of the Masters shall be selected (according to a rota to be fixed, and submitted to the approval of the Lord Chief Justice of England, before the commencement of the Christmas vacation in each year) to attend as Masters at chambers in the Queen's Bench Division during each of the four sittings of the offices in the year.

Attendance of Masters. Sittings.

*14. The six Masters, to whom, according to such rota, the attendance during any particular sittings has been allotted, shall, before the first day of such sittings, by arrangement amongst themselves, select three of their number to sit, one in each of the three rooms appropriated for that purpose in the Royal Courts of Justice, every Monday, Wednesday, and Friday throughout such sittings, the remaining three to sit on Tuesdays, Thursdays, and Saturdays throughout the same sittings.

Master shall occupy same room.

*15. Each of the Masters so selected shall, when so sitting at chambers, occupy the same room, and take all applications (under such alphabetical division of actions as the Masters may from time to time arrange) proper to be made to a Master at chambers, except applications in such actions as may have been under the provisions of Order 5 assigned to any other Master.

See O. 5, r. 6.

RULES OF THE SUPREME COURT.

*16. The arrangements made under the three last preceding Rules shall be publicly announced in such manner as the Lord Chief Justice of England shall from time to time direct. **Order LIV. Procedure.**

*17. Every application to a Master at chambers shall, at the time of hearing (unless any other Master's name shall already have been marked thereon), be marked by such Master with his name, and the cause or matter in which such application has been so marked shall thereupon become assigned to such Master. **Applications to be marked with Master's name.**

See note on O. 5, r. 8.

*18. Every subsequent application, which under the provisions of Order 5 must be made to the same Master, shall, if during any sittings, from urgency or other cause, it cannot conveniently be heard on the days when, under the above-mentioned arrangements, such Master would be sitting in the proper room as Master at chambers, or if it is made at any time after the sittings of such Master have under the same arrangements ceased, be taken by such Master in his own room, at such time as he may, either by special appointment in any particular case or by general rule to be published in the ante-room of Masters' chambers and other convenient places, direct. **Subsequent applications must be made to same Master**

See O. 5, r. 6. *The above six Rules are new, and introduce important changes.*

*19. All summonses under the Debtors Act, 1869, shall be heard in the first instance, if issuing out of the Central Office, before a Master, and if issuing out of a District Registry before the District Registrar, who shall respectively have power to make any order as to payment by instalments; but if it appears to him to be a case for committal, he shall adjourn the summons to be heard before a judge. **Summonses under Debtors Act, 1869.**

This is new. See p. 240 as to attachment under this Act. O. 35, r. 4.

20. If any matter appears to the Master proper for the decision of a judge the Master may refer the same to a judge, and the judge may either dispose of the matter or refer the same back to the Master with such directions as he may think fit. **Reference to judge.**

J. A., O. 54, r. 3.

21. Any person affected by any order or decision of a Master may appeal therefrom to a judge at chambers. **Appeal from**

RULES OF THE SUPREME COURT.

Order LIV. Such appeal shall be by way of indorsement on the summons by the Master at the request of any party, or by notice in writing to attend before the judge without a fresh summons, within four days after the decision complained of, or such further time as may be allowed by a judge or Master.

Master's decision.

J. A., O. 54, r. 4.

Stay of proceeding.

22. An appeal from a Master's decision shall be no stay of proceeding unless so ordered by a judge or Master.

J. A., O. 54, r. 5.

Appeal in Q. B. D.

*23. In the Queen's Bench Division the appeal from a decision of a judge at chambers shall be to a Divisional Court.

This Rule is new.

Appeal from decision in chambers to be by motion.

24. In the Queen's Bench Division, every appeal to the Court from any decision at chambers shall be by motion, and shall be made within eight days after the decision appealed against, or, if no Court to which such appeal can be made shall sit within such eight days, then on the first day on which any such Court may be sitting after the expiration of such eight days.

J. A., O. 54, r. 6. It is not enough that notice of motion be given within the time: *Fox v. Wallis*, 2 C. P. D. 45, and *Berry v. Exchange Trading Co.*, 1 Q. B. D. 318. See also *Taylor v. Jones*, 45 L. J. C. P. 110.

Procedure in chambers.

*25. The following Rules numbered 26 to 29, both inclusive, shall apply to all applications at chambers in the Queen's Bench Division: but shall not apply to proceedings in District Registries.

Summons, when returnable.

26. Unless a judge otherwise specially directs, summonses for time only shall be returnable at 10.30 in the forenoon, and be heard by the Masters in priority to other business. Other summonses shall, unless a judge otherwise specially directs, be returnable at successive hours, commencing at 11 in the forenoon. In settling the number of summonses returnable at each hour regard shall be had to the nature of the several applications.

Cf. J. A., O. 54, r. 10.

Summons, how entered on the lists.

27. Each summons, not being a summons for time only, shall, when issued, be entered by the proper officer in a list. The lists of summonses shall distinguish those which a Master has jurisdiction to hear from those which

RULES OF THE SUPREME COURT.

a Master has not jurisdiction to hear, and those which are to be attended by counsel from those which are not to be so attended. Order LIV.

J. A., O. 54, r. 11.

28. The summonses in each list for hearing by a judge or Master shall be called on in their order. If when a summons is called on neither party appears, the summons shall be passed over until the list for the hour has been gone through. The summonses passed over shall then be called on a second time in their order. If neither party appears to a summons so called on it shall be struck out. Summons to be called on in order. Failure to appear.

Cf. J. A., O. 54, r. 12, the final provision of which is now omitted.

29. An order shall be in the Form No. 2 in Appendix K., with such variations as circumstances require. It shall be sealed, and shall be marked with the name of the judge or Master by whom it is made. Form of order. How sealed.

J. A., O. 54, r. 13.

*ORDER LV.

Order LV.

CHAMBERS IN THE CHANCERY DIVISION.

I. *General.*

1. The business in chambers of the judges of the Chancery Division, to whom chambers are attached, shall be carried on in conjunction with their Court business. Business in chambers.

Master in Chancery Abolition Act, 1852, s. 12.

2. The business to be disposed of in chambers by judges of the Chancery Division, shall consist of the following matters, in addition to the matters which under any other Rule or by statute may be disposed of in chambers: What it shall consist of.

- (1.) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where there has been a judgment or order declaring the rights or where the title depends only upon proof of the identity or the birth, marriage, or death of any person:

The old Rule ended, "Depending and to the separate account of such person."

RULES OF THE SUPREME COURT.

- Order LV.**
- (2.) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where the cash does not exceed £1000, or the securities do not exceed £1000 nominal value:
 - (3.) Applications for payment to any person of the dividend or interest on any securities standing to the credit of any cause or matter, whether to a separate account or otherwise:
 - (4.) Applications under 36 Geo. III. c. 52, s. 32 (the Legacy Duty Act), in all cases where the money or securities in Court do not exceed £1000, or £1000 nominal value:

In Cons. O. 35, r. 1 (2), £300.

- (5.) Applications under 10 & 11 Vict. c. 96, and 12 & 13 Vict. c. 74 (the Trustee Relief Acts), in all cases where the money or securities in Court do not exceed £1000, or £1000 nominal value:

Cf. Cons. O. 35, r. 1 (3).

- (6.) Applications under 9 & 10 Vict. c. 20 (the Parliamentary Deposits Act), for investment, payment of dividends, and payment out of Court:
- (7.) Applications for interim and permanent investment and for payment of dividends under the Lands Clauses Consolidation Act, 1845, and any other Act passed before the 14th of August, 1855, whereby the purchase money of any property sold is directed to be paid into Court:
- (8.) Applications under the Trustee Acts, 1850 and 1852, in all cases where a judgment or order has been given or made for the sale, conveyance, *or transfer of any stock* or of any hereditaments, corporeal or incorporeal, of any tenure or description, whatever may be the estate or interest therein:

Cons. O. 35, r. 1 (4).

- (9.) Applications on behalf of infants under 1 Will. IV. c. 65, ss. 12, 16, and 17, where the infant is a ward of Court, or the administration of the estate of the infant, or the maintenance of the infant is under the direction of the Court:

Cons. O. 35, r. 1 (5).

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- (10.) Applications under 18 & 19 Vict. c. 43, for the Order LV. settlement of any property of any infant on marriage :
- (11.) Applications under the Copyhold Acts respecting any securities or money in Court. Notice of any such application is not to be given to the Copyhold Commissioners unless the judge shall so direct :
- (12.) Applications as to the guardianship and maintenance or advancement of infants :
- (13.) Applications connected with the management of property :
- (14.) Applications for or relating to the sale by auction or private contract of property, and as to the manner in which the sale is to be conducted, and for payment into Court and investment of the purchase money :
- (15.) All applications under 6 & 7 Vict. c. 73 (not being applications for orders of course) for the taxation and delivery of bills of costs and for the delivery by any solicitor of deeds, documents, and papers :
- (16.) Applications for orders on the further consideration of any cause or matter where the order to be made is for the distribution of an insolvent estate or for the distribution of the estate of an intestate, or for the distribution of a fund among creditors or debenture holders :
- (17.) Applications for time to plead, for leave to amend pleadings, for discovery and production of documents, and generally all applications relating to the conduct of any cause or matter :
- (18.) Such other matters as the judge may think fit to dispose of at chambers.

Cons. O. 35. Cf. 15 & 16 Vict. c. 80, s. 26. O. 10 Nov., 1852.
See Morgan, p. 123.

II. *Administrations and Trusts.*

*3. The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law or customary heir of a deceased person, or as cestui que trust under the trust of any deed

Executors or administrators may take out originating summons.

RULES OF THE SUPREME COURT.

Order LV. or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may take out, as of course, an originating summons returnable in the chambers of a judge of the Chancery Division for such relief of the nature or kind following, as may by the summons be specified and as the circumstances of the case may require (that is to say), the determination, without an administration of the estate or trust, of any of the following questions or matters :

See O. 49,
r. 6.

- (a.) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or cestui que trust :
- (b.) the ascertainment of any class of creditors, legatees, devisees, next of kin, or others :
- (c.) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts :
- (d.) the payment into Court of any money in the hands of the executors or administrators or trustees :
- (e.) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees :
- (f.) the approval of any sale, purchase, compromise, or other transaction :
- (g.) the determination of any question arising in the administration of the estate or trust.

As to time, see p. 16. As to the old administration summons, see Morgan, p. 193.

Who may
apply.

*4. Any of the persons named in the last preceding Rule may in like manner apply for and obtain an order for—

- (a.) the administration of the personal estate of the deceased :
- (b.) the administration of the real estate of the deceased :
- (c.) the administration of the trust.

See O. 49, r. 6.

Who shall
be served
with the
summons.

*5. The persons to be served with the summons under the last two preceding Rules in the first instance shall be the following ; (that is to say,)—

A. Where the summons is taken out by an executor or administrator or trustee,—

- (a.) for the determination of any question, under

RULES OF THE SUPREME COURT.

- sub-sections (a.), (e.), (f.), or (g.) of Rule 3, **Order LV.**
the persons, or one of the persons, whose rights or interests are sought to be affected: _____
- (b.) for the determination of any question, under sub-section (b.) of Rule 3, any member or alleged member of the class:
 - (c.) for the determination of any question, under sub-section (c.) of Rule 3, any person interested in taking such accounts:
 - (d.) for the determination of any question, under sub-section (d.) of Rule 3, any person interested in such money:
 - (e.) for relief under sub-section (a.) of Rule 4, the residuary legatees, or next of kin, or some of them:
 - (f.) for relief under sub-section (b.) of Rule 4, the residuary devisees, or heirs, or some of them:
 - (g.) for relief under sub-section (c.) of Rule 4, the cestuis que trust, or some of them:
 - (h.) if there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur:

B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.

These Rules are most important.

*6. The Court or a judge may direct such other persons to be served with the summons as they or he may think fit. **Other parties.**

Cf. O. 52, r. 6, as to petitions.

*7. The application shall be supported by such evidence as the Court or a judge may require, and directions may be given as they or he may think just for the trial of any questions arising thereout. **Application to be supported by evidence.**

*8. It shall be lawful for the Court or a judge upon such summons to pronounce such judgment as the nature of the case may require. **Judgment.**

See O. 54, r. 9.

*9. The Court or a judge may give any special directions touching the carriage or execution of the judgment, or the service thereof upon persons not parties, as they or he may think just. **Execution of judgment.**

RULES OF THE SUPREME COURT.

Order LV. *10. It shall not be obligatory on the Court or a judge to pronounce or make a judgment or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order.

When judge has discretion.

Every subsequent summons to be marked with same judge's name.

*11. When any summons under Rules 3 or 4 of this Order has been taken out, every subsequent summons relating to the same estate or trust shall be marked with the name of the judge, to whom, for the time being, the matter is assigned, and in case any such subsequent summons shall be marked with the name of another judge it shall be the duty of the executors, administrators, or trustees, to apply for the transfer to such first-mentioned judge of such subsequent summons.

See O. 49, r. 2.

Not to interfere with control of executor except.

*12. The issue of a summons under Rule 3 of this Order shall not interfere with or control any power or discretion vested in any executor, administrator, or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought.

The above Rules are new.

Charitable Trusts Act, 1853.

*13. Any application to a judge in chambers under "The Charitable Trusts Act, 1853," section 28, shall be made by summons.

Cons. O. 41, r. 10.

Appeal from order under r. 13.

*14. No order made under the Act in the last preceding Rule mentioned by the judge in chambers shall be subject to appeal where the gross annual income of the charity has not been declared by the Charity Commissioners for England and Wales to exceed £100, unless the judge by whom such order may have been made shall certify that such appeal ought to be permitted either absolutely or on such terms as the judge may think fit to impose.

Cons. O. 41, r. 13.

III. Powers and Duties of Chief Clerks.

Judge may decide as to what his Chief Clerk may do.

15. *The judges of the Chancery Division to whom chambers are attached* shall have power, subject to these Rules, to order what matters shall be heard and investigated by their Chief Clerks, either with or without their direction, during their progress; and what matters shall be heard and investigated by themselves, and particularly

RULES OF THE SUPREME COURT.

if the judge shall so direct, his Chief Clerks shall take **Order LV.**
such accounts and make such inquiries as have usually
been *taken and made by the Chief Clerks*, and the judge
shall give such aid and directions in every such account or
inquiry as he may think fit, but subject to the right
hereinafter provided for the parties to bring any particular
point before the judge; *provided that no judgment or
order for general administration shall be made under
Rule 4 of this Order or otherwise by a Chief Clerk.

See J. A., 1873, s. 77. 15 & 16 Vict. c. 80, s. 29.

*16. Each Chief Clerk shall, for the purpose of any Chief
proceedings directed to be taken before him, have full Clerks
power to issue advertisements, to summon parties and may ex-
witnesses, to administer oaths, to require the production amine
of documents, to take affidavits and acknowledgments, witnesses,
other than acknowledgments by married women, and &c.
when so directed by the judge to examine parties and
witnesses either upon interrogatories or vivâ voce, as the
judge shall direct.

See 15 & 16 Vict. c. 80, s. 30.

*17. Parties and witnesses summoned to attend before a Parties so
Chief Clerk shall be bound to attend in pursuance of the summoned
summons, and shall be liable to process of contempt in like liable to
manner as parties or witnesses are liable thereto in case of process of
disobedience to any order of the Court, or in case of contempt.
default in attendance, in pursuance of any order of the Court
or of any writ of subpoena ad testificandum, and all persons
swearing or affirming before any Chief Clerk shall be liable
to all such penalties, punishments, and consequences for
any wilful and corrupt false swearing or affirming con-
tained therein, as if the matters sworn or affirmed had
been sworn and affirmed before any other person by law
authorised to administer oaths, to take affidavits, and to
receive affirmations.

15 & 16 Vict. c. 80, s. 31. See *Buckeridge v. Whalley*, 6 W. R. 180.

*18. The Court or judge may direct any computation of Computa-
interest, or the apportionment of any fund, to be certified tion or ap-
by the Chief Clerk, and to be acted upon by the Paymaster- pointment.
General or other person without further order.

IV. Assistance of Experts.

*19. The judge in chambers may, in such way as he Judge may
thinks fit, obtain the assistance of accountants, merchants, obtain

RULES OF THE SUPREME COURT.

Order LV. engineers, actuaries, and other scientific persons the better
_____ assistance
of experts. to enable any matter at once to be determined, and he may
act upon the certificate of any such person.

An expert cannot call witnesses: *Morris v. Llanelly Ry. Co.*,
W. N. (1868) 46. See 15 & 16 Vict. c. 80, s. 42. See p. 223.

V. *Summonses in Chambers.*

**Originat-
ing sum-
mons.**
**Prepara-
tion and
issue.**
Copies.

*20. An originating summons shall be in the Form No. 25 in Appendix L., with such variations as circumstances may require. It shall be prepared by the applicant or his solicitor, and shall be sealed in the Central Office, and when so sealed shall be deemed to be issued. The person obtaining the summons shall leave at the Central Office a copy thereof, which shall be filed and stamped in the manner required by law.

Cf. J. A., O. 54, r. 9. See O. 5, rr. 10—12, inclusive.

**Date for
attend-
ance
under.**

*21. The day and hour for attendance under an originating summons shall be left to be added, after the sealing thereof, in the margin or at the foot of the same, and shall be there inserted when such day and hour shall have been fixed at the chambers of the judge to whom the matter is assigned by the Chief Clerk, who shall mark the summons with the seal used in such chambers.

**Indorse-
ment on
an origina-
ting sum-
mons not
served.**

*22. Where from any cause an originating summons may not have been served upon any party seven clear days before the return thereof, an indorsement may be made upon the summons, and upon a copy thereof stamped for service appointing a new time for the parties not before served to attend at the chambers of the judge, and such indorsements shall be sealed at the judge's chambers, and the service of the copy so indorsed and sealed shall have the same force and effect as the service of an originating summons, and where any party has been served before such indorsement, the hearing thereof may, upon the return of the summons, be adjourned to the new time so appointed.

Cona. O. 35, r. 8.

**Parties
served.**

*23. The parties served with an originating summons shall, before they are heard in chambers, enter appearances in the *Central Office* and give notice thereof.

Formerly in the Record and Writ Clerks' Office. Cona. O. 35, r. 9.

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24. The summons by the Chief Clerk requiring the attendance of parties, witnesses, or others, shall be in the Form No. 1 in Appendix L, with such variations as the circumstances of the case may require.

Order LV.
Form of summons.

Cf. O. 36, r. 21.

**VI. Proceedings relating to Infants.*

25. Upon applications for the appointment of guardians of infants and allowance for maintenance the evidence shall show:—

**Applica-
tion for
appoint-
ment of
guardians.**

- (a.) The ages of the infants;
- (b.) The nature and amount of the infants' fortunes and incomes;
- (c.) What relations the infants have.

Regulations, Aug. 8, 1857, No. 19.

26. Upon applications to obtain the sanction of the Court to infants making settlements on marriage under 18 & 19 Vict. c. 43, evidence shall be produced to show:—

**Applica-
tion under
18 & 19
Vict. c.
43, for
making
settle-
ments on
marriage
of an
infant.**

- (a.) The age of the infant;
- (b.) Whether the infant has any parents or guardians;
- (c.) With whom or under whose care the infant is living, and, if the infant has no parents or guardians, what near relations the infant has;
- (d.) The rank and position in life of the infant and parents;
- (e.) What the infant's property and fortune consist of;
- (f.) The age, rank, and position in life of the person to whom the infant is about to be married;
- (g.) What property, fortune and income such person has;
- (h.) The fitness of the proposed trustees, and their consent to act;

The proposals for the settlement of the property of the infant, and of the person to whom such infant is proposed to be married, shall be submitted to the judge.

Regulations of Aug. 8, 1857, No. 20. See *Re Dalton*, 6 D. M. G. 201.

*27. At any time during the proceedings at any judge's chambers under any judgment or order, the judge may, if he shall think fit, require a guardian ad litem to be appointed for any infant or person of unsound mind not so found by inquisition, who has been served with notice of such judgment or order.

**Appoint-
ment of
guardian
ad litem.**

Cona. O. 7, r. 7. Cf. Cona. O. 40, r. 4. As to costs, see O. 65, r. 13.

RULES OF THE SUPREME COURT.

Order LV.

**VII. Documents to be left at Chambers.*

Copy of judgment to be left at chambers.

***28.** In all cases of proceedings in chambers under any judgment or order, the party prosecuting the same shall leave a copy of such judgment or order at the judge's chambers, and shall certify the same to be a true copy of the judgment or order as passed and entered.

Cons. O. 35, r. 15. See also r. 30, *infra*.

Adjournment from Court to chambers and vice versa.

***29.** Whenever any matter is adjourned from the Court to chambers, or any directions are given in Court to be acted upon at chambers, whether upon a matter adjourned into Court from chambers, or upon any other occasion, without an order being drawn up, a note signed by the Registrar, stating for what purpose such matter is adjourned to chambers, or the directions given, shall be procured from the Registrar and left at chambers.

See Regulations of Aug. 8, 1857, No. 3. When case is adjourned to chambers the reservation of costs is implied without any special direction: *Wallis v. Bastard*, 2 W. R. 47. O. 50, r. 17.

Note of names of solicitors.

***30.** A note stating the names of the solicitors for all the parties, and showing for which of the parties such solicitors are concerned, shall be left at chambers with every judgment or order.

Regulations of Aug. 8, 1857, No. 6.

Copy of certificate, &c., to be left at chambers.

***31.** A copy of every certificate of the Central Office of entry of a memorandum of service of notice of a judgment or order, and of every appearance entered by a person served with such notice to attend the proceedings, certified by the solicitor, shall be left at chambers.

Regulations of Aug. 8, 1857, No. 8.

**VIII. Summonses to proceed.*

Time for bringing in order for accounts, &c.

***32.** Every judgment or order directing accounts or inquiries to be taken or made shall be brought into the judge's chambers by the party entitled to prosecute the same within ten days after the same shall have been passed and entered, and in default thereof any other party to the cause or matter shall be at liberty to bring in the same, and such party shall have the prosecution of such judgment or order unless the judge shall otherwise direct.

Cons. O. 35, r. 22.

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***33.** Upon a copy of the judgment or order being left, a summons shall be issued to proceed with the accounts or inquiries directed, and upon the return of such summons the judge, if satisfied by proper evidence that all necessary parties have been served with notice of the judgment or order, shall thereupon give directions as to the manner in which each of the accounts and inquiries is to be prosecuted, the evidence to be adduced in support thereof, the parties who are to attend on the several accounts and inquiries, and the time within which each proceeding is to be taken, and a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be varied, by addition thereto or otherwise, as may be found necessary.

Order LV.

Summons to proceed with accounts, &c.
Evidence and time.

Cons. O. 35, r. 16.

***34.** Where by a judgment or order a deed is directed to be settled by the judge in chambers in case the parties differ, a summons to proceed shall be issued, and upon the return of the summons the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the judge shall think fit, to the party entitled to object thereto, and the party so entitled to object shall be directed to deliver to the other party a statement in writing of his objections (if any) within eight days after the delivery of such copy, and the proceeding shall be adjourned until after the expiration of the said period of eight days.

Settling deed in chambers when parties differ.

Cons. O. 35, r. 17. When an infant is interested the words "in case the parties differ," are omitted. See *Calvert v. Godfrey*, 2 Beav. 267.

***35.** Where, upon the hearing of the summons to proceed, it appears to the judge that by reason of absence, or for any other sufficient cause, the service of notice of the judgment or order upon any party cannot be made or ought to be dispensed with, the judge may, if he shall think fit, wholly dispense with such service, or may at his discretion order any substituted service or notice by advertisement or otherwise in lieu of such service.

Judge may dispense with service of notice of judgment or order.

Cons. O. 35, r. 18. See 15 & 46 Vict. c. 86, s. 42.

***36.** If on the hearing of the summons to proceed it shall appear that all necessary parties are not parties to the action or have not been served with notice of the judgment or order, directions may be given for advertisement for

Directions for advertisement for creditors.

RULES OF THE SUPREME COURT.

Order LV. creditors, and for leaving the accounts in chambers, but the adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceeding is to be taken, except for the purpose of ascertaining the parties to be served, until all necessary parties shall have been served, and are bound, or service shall have been dispensed with, and until directions shall have been given as to the parties who are to attend on the proceedings.

This Rule is new.

Course of proceeding in chambers.

***37.** The course of proceeding in chambers shall ordinarily be the same as the course of proceeding in Court upon motions. Copies, abstracts, or extracts of or from accounts, deeds, or other documents and pedigrees and concise statements shall, if directed, be supplied for the use of the judge and his chief clerks, and where so directed, copies shall be handed over to the other parties. But no copies shall be made of deeds or documents where the originals can be brought in unless the judge shall otherwise direct.

Copies.

Cons. O. 35, r. 26.

**IX. Summons Book.*

The "Summons Book."

***38.** At the time any summons is obtained, an entry thereof shall be made in the "Summons Book," stating the date on which the summons is issued, the name of the cause or matter, and by what party, and shortly for what purpose such summons is obtained, and at what time such summons is returnable.

Cons. O. 35, r. 24.

Lists for each day.

***39.** Lists of matters appointed for each day shall be made out and affixed outside the doors of the chambers of the respective judges; and, subject to any special direction, such matters shall be heard in the order in which they appear in such lists.

Cons. O. 35, r. 25.

**X. Attendants.*

One solicitor may be nominated by judge to represent a class.

***40.** Where, upon the hearing of the summons to proceed, or at any time during the prosecution of the judgment or order, it appears to the judge, with respect to the whole or any portion of the proceedings, that the interests of the parties can be classified, he may require the parties constituting each or any class to be repre-

RULES OF THE SUPREME COURT.

sented by the same solicitor, and may direct what parties **Order LV.** may attend all or any part of the proceedings, and where the parties constituting any class cannot agree upon the solicitor to represent them, the judge may nominate such solicitor for the purpose of the proceedings before him, and where any one of the parties constituting such class declines to authorise the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party shall personally pay the costs of his own solicitor of and relating to the proceedings before the judge, with respect to which such nomination shall have been made, and all such further costs as shall be occasioned to any of the parties by his being represented by a different solicitor from the solicitor so to be nominated.

Cons. O. 35, r. 20. Only one set of costs allowed where a number of persons in *the same interest*, with leave to attend the proceedings in an administration suit, appeared separately on an adjourned summons. See *Stevenson v. Abington*, 11 W. R. 936.

*41. Wherever in any proceeding before a judge in Judge chambers the same solicitor is employed for two or more parties, such judge may at his discretion require that any of the said parties shall be represented before him by a distinct solicitor, and adjourn such proceedings until such party is so represented. **may require a distinct solicitor to represent.**

Cons. O. 35, r. 21.

*42. Any of the parties other than those who shall have been directed to attend may attend at their own expense, and upon paying the costs, if any, occasioned by such attendance, or, if they think fit, they may apply by summons for liberty to attend at the expense of the estate, or to have the conduct of the action either in addition to or in substitution for any of the parties who shall have been directed to attend.

See note to Rule 40.

*43. An order is to be drawn up on a summons to be taken out by the plaintiff or the party having the conduct of the action, stating the parties who shall have been directed to attend and such of them (if any) as shall have elected to attend at their own expense, and such order is to be recited in the Chief Clerk's certificate.

Cf. R. S. C., 1875, Costs, r. 20.

*XI. *Advertisements for Creditors and Claimants.*

*44. Where a judgment or order is given or made, Creditors

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Order LV. whether in Court or in chambers, directing an account of debts, claims, or liabilities, or an inquiry for heirs, next of kin, or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time, which may be fixed for that purpose by advertisement, shall be excluded from the benefit of the judgment or order.

not coming in to prove, excluded.

Cons. O. 35, r. 12. Where fund becomes distributable after a long period and only some creditors claim, see *Ashley v. Ashley*, L. R. 1 Ch. D. 244.

*45. Where an advertisement is required for the purpose of any proceeding in chambers, a peremptory advertisement, and only one, shall be issued, unless for any special reason it may be thought necessary to issue a second advertisement or further advertisements, and any advertisement may be repeated as many times and in such papers as may be directed.

Cons. O. 35, r. 35.

Advertisement.
How prepared.

*46. The advertisement shall be prepared by the party prosecuting the judgment or order, and submitted to the Chief Clerk for approval, and when approved shall be signed by him, and such signature shall be sufficient authority to the printer of the Gazette to insert the same.

Cons. O. 35, r. 36 ; and cf. O. 9, r. 2.

Shall fix a time.

*47 Advertisements for creditors and other claimants shall fix a time, within which each claimant, not being a creditor, is to come in and prove his claim, and within which each creditor is to send to the executor or administrator of the deceased, or to such other party as the judge shall direct, or to his solicitor, to be named and described in the advertisement, the name and address of such creditor and the full particulars of his claim, and a statement of his account and the nature of the security (if any) held by him. Such advertisements shall be in one of the Forms No. 2 and 3 in Appendix L., with such variations as the circumstances of the case may require. At the time of directing such advertisement a time shall be fixed for adjudicating on the claims.

Form.

Cf. Cons. O. 35, r. 37. But most of this Rule is new. See *Wood v. Weightman*, L. R. 13 Eq. 484 ; *Clegg v. Rowland*, L. R. 3 Eq. 368.

Affidavits.
Office
pieces.

*48. Claimants filing affidavits shall not be required to take office copies, but the person who examines the claims

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shall take office copies and produce the same at the Order LV. hearing, unless the judge shall otherwise direct.

Cons. O. 35, r. 39. See p. 194 and O. 56, r. 7, and also O. 33.

*49. No creditor need make any affidavit nor attend in support of his claim (except to produce his security) unless he is served with a notice requiring him to do so as hereinafter provided. Where creditors not served.

O. May 27, 1865, r. 2.

*50. Every creditor shall produce the security (if any) held by him before the judge at such time as shall be specified in the advertisement for that purpose, being the time appointed for adjudicating on the claims, and every creditor shall, if required, by notice in writing (Form No. 4, in Appendix L.) to be given by the executor or administrator of the deceased, or by such other party as the judge shall direct, produce all other deeds and documents necessary to substantiate his claim before the judge at his chambers at such time as shall be specified in such notice. Creditor must produce security.

O. May 27, 1865, r. 3. See Appendix L.

*51. In case any creditor shall neglect or refuse to comply with the last preceding Rule, he shall not be allowed any costs of proving his claim, unless the judge shall otherwise direct. Refusing to produce, &c.

O. May 27, 1865, r. 4. See r. 53.

*52. The executor or administrator of the deceased, or such other party as the judge shall direct, shall examine the claims of creditors sent in pursuant to the advertisement, and shall ascertain, so far as he is able, to which of such claims the estate of the deceased is justly liable, and he shall, at least seven clear days prior to the time appointed for adjudication, file an affidavit (Form No. 5, in Appendix L.), to be made by such executor or administrator, or one of the executors or administrators, or such other party, either alone or jointly with his solicitor or other competent person, or otherwise, as the judge shall direct, verifying a list of the claims (Form No. 6, in Appendix L.), the particulars of which have been sent in pursuant to the advertisement, and stating to which of such claims, or parts thereof respectively, the estate of the deceased is in the opinion of the deponent justly liable, and his belief that such claims, or parts thereof Who shall examine claims.

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Order LV. respectively, are justly due and proper to be allowed, and the reasons for such belief.

O. May 27, 1865, r. 5 ; and see r. 48 and O. 16.

Time for
making
affidavit.

*53. In case the judge shall think fit so to direct, the making of the affidavit referred to in the last preceding Rule shall be postponed till after the day appointed for adjudication, and shall then be subject to such directions as the judgm may give.

O. May 27, 1865, r. 6.

Adjourn-
ment
when
claims are
undisposed
of.

*54. Where on the day appointed for hearing the claims any of them remain undisposed of, an adjournment day for hearing such claims shall be fixed, and where further evidence is to be adduced, a time may be named within which the evidence on both sides is to be closed, and directions may be given as to the mode in which such evidence is to be adduced.

Cons. O. 35, r. 40. See O. 36, rr. 34 and 48, and O. 54, r. 9.

Power of
judge as
to proof.

*55. At the time appointed for adjudicating upon the claims of creditors, or at any adjournment thereof, the judge may in his discretion allow any of the claims, or any part thereof respectively, without proof by the creditors, and direct such investigation of all or any of the claims not allowed, and require such further particulars, information, or evidence relating thereto as he may think fit, and may, if he so think fit, require any creditor to attend and prove his claim, or any part thereof, and the adjudication on such claims as are not then allowed shall be adjourned to a time to be then fixed.

O. May 27, 1865, r. 7.

Notice to
creditors
whose
claims are
allowed.

*56. Notice (Form No. 7, in Appendix L.) shall be given by the executor or administrator, or such other party as the judge shall direct, to every creditor whose claim, or any part thereof, has been allowed without proof by the creditor, of such allowance, and to every such creditor as the judge shall direct to attend and prove his claim or such part thereof as is not allowed by a time to be named in such notice (Form No. 8, in Appendix L.), not being less than seven days after such notice, and to attend at a time to be therein named, being the time to which the adjudication thereon shall have been adjourned, and in case any creditor shall not comply with such notice,

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his claim, or such part thereof as aforesaid, shall be dis- Order LV.
allowed.

O. May 27, 1865, r. 8. See Appendix L.

*57. After the time fixed by the advertisement no claims shall be received (except as hereinbefore provided in case of an adjournment), unless the judge at chambers shall think fit to give special leave, upon application made by summons, and then upon such terms and conditions as to costs and otherwise as the judge shall think fit. When claims excluded.

O. May 27, 1865, r. 10. *Halliley v. Henderson*, 4 Jur. N. S. 202.

*58. A creditor who has come in and established his debt in the judge's chambers under any judgment or order shall be entitled to the costs of so establishing his debt, and the sum to be allowed for such costs shall be fixed by the judge, unless he shall think fit to direct the taxation thereof; and the amount of such costs, or the sum allowed in respect thereof, shall be added to the debt so established. Creditor establishing claim allowed costs.

Cons. O. 40, r. 24. See r. 51. As to amount allowed, see *Waterton v. Burt*, 39 L. J. Ch. 425.

*59. A list of all claims allowed shall, when required by the judge, be made out and left in the judge's chambers by the person who examines the claims. List of claims allowed.

Cons. O. 35, r. 44.

*60. Where any judgment or order is made for payments by the Paymaster-General to creditors, the party whose duty it is to prosecute such judgment or order shall send to each such creditor or his solicitor (if any) a notice (Form No. 9, in Appendix L.) that the cheques may be received from the Paymaster-General, and such party shall, when required, produce such judgment or order and any other papers necessary to enable such creditors to receive their cheques and get them passed. Notice of payment.

O. May 27, 1865, r. 12.

*61. Every notice by this order required to be given to creditors or other claimants shall, unless the judge shall otherwise direct, be deemed sufficiently given and served if transmitted by the post prepaid to the creditor or other claimant to be served according to the address given in the claim sent in by him pursuant to the advertisement, or in case such creditor or other claimant shall have What notice sufficient.

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Order LV. employed a solicitor, to such solicitor according to the address given by him.

O. May 27, 1865, r. 13.

*XII. *Interest.*

Rate of. *62. Where a judgment or order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest shall be computed on such debts as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of 4 per cent. per annum from the date of the judgment or order.

Cons. O. 42, r. 9. Cf. O. 42, r. 16, and O. 58, r. 19. *Fowler v. Fowler*, 4 De G. & J. 250.

Debt not carrying interest. When interest allowed. *63. A creditor whose debt does not carry interest, who comes in and establishes the same before the judge in chambers under a judgment or order of the Court or of the judge in chambers, shall be entitled to interest upon his debt at the rate of 4 per cent. per annum from the date of the judgment or order out of any assets which may remain after satisfying the costs of the cause or matter, the debts established, and the interest of such debts as by law carry interest.

Cons. O. 42, r. 10. See O. 3, r. 6. *Wheeler v. Gill*, L. R. 19 Eq. 316.

Interest on legacies. *64. Where a judgment or order is made directing an account of legacies, interest shall be computed on such legacies after the rate of 4 per cent. per annum from the end of one year after the testator's death, unless otherwise ordered, or unless any other time of payment or rate of interest is directed by the will, and in that case according to the will.

Cons. O. 42, r. 11. See also O. 43, r. 2. *Gruggen v. Cochrane*, 5 N. R. 457.

*XIII. *Certificates of the Chief Clerk.*

No particular form for directions for proceedings before chief clerk. *65. The directions to be given for or touching any proceedings before the Chief Clerk shall require no particular form, but the result of such proceedings shall be stated in the shape of a concise certificate to the judge. It shall not be necessary for the judge to sign such certificate, and unless an order to discharge or vary the same is made, the

RULES OF THE SUPREME COURT.

certificate shall be deemed to be approved and adopted by Order LV:
the judge.

Cf. Master in Chancery Abolition Act, 1852, s. 32. Note also
O. 61, r. 4.

*66. The certificate of the Chief Clerk shall not, unless
the circumstances of the case render it necessary, set out
the judgment or order or any documents or evidence or
reasons, but shall refer to the judgment, or order, docu-
ments, and evidence or particular paragraphs thereof, so
that it may appear upon what the result stated in the
certificate is founded.

What cer-
tificate
shall set
out.

Cons. O. 35, r. 47. Cf. O. 55, r. 24.

*67. The certificate of the Chief Clerk shall be in the
Form No. 10, in Appendix L., with such variations as the
circumstances may require, and when prepared and settled
shall be transcribed in such form, and within such time as
the Chief Clerk shall require, and shall be signed by the
Chief Clerk either then or (if necessary) at an adjournment
to be made for the purpose.

Form of
certificate.

See Cons. O. 35, r. 48, which is hereby altered as regards
Transcripts.

*68. Where an account is directed, the certificate shall
state the result of such account, and not set the same out
by way of schedule, but shall refer to the account verified
by the affidavit filed, and shall specify by the numbers
attached to the items in the account which, if any, of such
items have been disallowed or varied, and shall state what
additions, if any, have been made by way of surcharge or
otherwise, and where the account verified by the affidavit
has been so altered that it is necessary to have a fair
transcript of the account as altered, such transcript may be
required to be made by the party prosecuting the judg-
ment or order, and shall then be referred to by the
certificate. The accounts and the transcripts (if any)
referred to by certificates shall be filed therewith, or re-
tained in chambers and subsequently filed, as the judge in
chambers may direct. No copy of any such account shall
be required to be taken by any party.

When
account
directed.

Variation.

No copy
need be
taken.

Cons. O. 35, r. 46.

*69. Any party may, before the proceedings before the
Chief Clerk are concluded, take the opinion of the judge
upon any matter arising in the course of the proceedings
without any fresh summons for the purpose.

Taking
judge's
opinion.

Cf. Master in Chancery Abolition Act, 1852, s. 33.

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Order LV.	*70.	Every certificate, with the accounts (if any) to be filed therewith, shall be transmitted by the Chief Clerk to the Central Office to be there filed, and shall thenceforth be binding on all the parties to the proceedings unless discharged or varied upon application by summons to be made before the expiration of eight clear days after the filing of the certificate ; provided that, the time for applying to discharge or vary certificates, to be acted upon by the Paymaster-General without further order, or certificates on passing receivers' accounts, shall be two clear days after the filing thereof.
Certificate where filed.		
When binding.		

As to varying an apparent error, see *Cradock v. Owen*, 2 Sm. & G 241.

Cf. Master in Chancery Abolition Act, 1852, s. 34.

Discharging or varying certificate. *71. The judge may, if the special circumstances of the case require it, upon an application by motion or summons for the purpose, direct a certificate to be discharged or varied at any time after the same has become binding on the parties.

Cf. Master in Chancery Abolition Act, 1852, s. 35. Formerly could only be discharged or varied under very special circumstances. See *Reeve v. Reeve*, W. N. (1871) 52.

*XIV. *Further Consideration.*

Time for. *72. Where any matter originating in chambers shall, at the original or any subsequent hearing, have been adjourned for further consideration in chambers, such matter may, after the expiration of eight days and within fourteen days from the filing of the Chief Clerk's certificate, be brought on for further consideration by a summons, to be taken out by the party having the conduct of the matter, and after the expiration of such fourteen days by a summons, to be taken out by any other party. Such summons shall be in the Form following:—

Form of summons. " That this matter, the further consideration whereof was
" adjourned by the order of the _____ day of
" _____ 18 _____, may be further considered,"
and shall be served six clear days before the return.
Provided that this Rule shall not apply to any matter, the
further consideration whereof shall, at the original or any
subsequent hearing, have been adjourned into Court.

Regulations of Aug. 8, 1857, No. 18. See O. 36.

RULES OF THE SUPREME COURT.

***XV. Registering and Drawing up of Orders in Chambers.** **Order LV.**

***73.** *Notes* shall be kept of all proceedings in the judges' chambers with proper dates, so that all such proceedings in each cause or matter may appear consecutively, and in chronological order, with a short statement of the questions or points decided or ruled at every hearing. Notes of proceedings.

Formerly a Register was kept. Cons. O. 35, r. 57.

***74.** The judge may direct any order made in chambers to be drawn up by the Registrars, and any such order shall be entered in the same manner as orders made in open Court. Orders drawn by Registrars.

See Cons. O. 35, r. 32, and Master in Chancery Abolition Act, 1852, s. 14.

***75.** The Forms Nos. 11 to 24 in Appendix L. shall be used for the respective purposes therein mentioned, with such variations as circumstances may require. Form.

When enforced as judgment, see O. 42, r. 24; see also O. 50, rr. 11 and 12, and O. 55, r. 43.

***ORDER LVI.**

Order LVI.

REFERENCES IN ADMIRALTY ACTIONS.

See O. 29.

***1.** This Order shall apply to references by the Court or a judge to the Admiralty Registrar, whether the reference be to the Registrar alone or to the Registrar assisted by one or by two merchants. To Registrar.

***2.** Within twelve days from the day when the order for the reference is made, the solicitor for the claimant shall file the claim and affidavits; and within twelve days from the day when the claim and affidavits are filed, the adverse solicitor shall file his counter affidavits. Time for filing claim, &c.

See O. 38, r. 10, and O. 66, rr. 8 and 9.

***3.** From the filing of the counter affidavits six days only shall be allowed for filing any further affidavits by either solicitor, save by order of the Court or a judge, or by permission of the Registrar. Time for counter affidavits.

See O. 5, rr. 16 and 17.

RULES OF THE SUPREME COURT.

- Order LVI.** *4. Within three days from the expiration of the time allowed for filing the last affidavits, the solicitor for the claimant shall file in the Registry a notice, with the stamps for the reference affixed thereto, praying to have the reference placed on the list for hearing ; and if he shall not do so, the adverse solicitor may apply to the Court or a judge to have the claim dismissed with costs.
- Time for filing notice in Registry.**
- Adjournment.** *5. At the time appointed for the reference, if either solicitor be present, the reference may be proceeded with ; but the Registrar may adjourn the reference from time to time, as he may deem proper.
- See O. 13, rr. 12 and 13.**
- Evidence before Registrar.** *6. Witnesses may be produced before the Registrar for examination, and the evidence shall, on the application of either solicitor, but at the expense in the first instance of the party on whose behalf the application is made, be taken down by a short-hand writer or reporter appointed by the Court, who shall be sworn faithfully to report the evidence ; and a transcript of the short-hand writer's or reporter's notes, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses on an objection to the Registrar's report.
- Counsel Fees.** *7. Counsel may attend the hearing of any reference, but the expenses attending the employment of counsel shall not be allowed on taxation, unless the Registrar shall be of opinion that the attendance of counsel was necessary.
- Costs.** *8. The Registrar may, if he think fit, report whether any and what part of the costs of the reference should be allowed, and to whom.
- Filing report.** *9. The solicitor for the claimant shall, within six days from the time when he has received a notice from the Registry that the report is ready, take up and file the same in the Registry.
- Default in so filing.** *10. If the solicitor for the claimant shall not take the steps prescribed in the last preceding Rule, the adverse solicitor may take up and file the report, or may apply to the Court or a judge to have the claim dismissed with costs.
- Objecting to Registrar's report.** *11. A solicitor intending to object to the Registrar's report shall, within six days from the filing of the report, file in the Registry a notice, a copy of which shall have been previously served on the adverse solicitor ; and within a

RULES OF THE SUPREME COURT.

further period of twelve days he shall file his petition in Order LVI.
objection to the report.

*12. All the Rules respecting the pleadings and proofs Rules to
in an action and the printing thereof, shall, so far as they apply.
are applicable, apply to the pleadings, proofs, and printing
in an objection to a report of the Registrar.

ORDER LVII

Order
LVII.

INTERPLEADER.

- *1. Relief by way of interpleader may be granted— When
granted.
- (a.) Where the person seeking relief (in this Order called the applicant) is under liability for any debt, money, goods, or chattels, for or in respect of which he is, or expects to be, sued by two or more parties (in this Order called the claimants) making adverse claims thereto :
- (b.) Where the applicant is a sheriff or other officer charged with the execution of process by or under the authority of the High Court, and claim is made to any money, goods, or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process issued.

23 & 24 Vict. c. 126. See O. 42, r. 15. The Masters generally refuse a sheriff costs, but see *In re Streeter, Ex parte Morris*, 19 Ch. D. 216, Jessel, M.R., and pp. 249 and 250.

*2. The applicant must satisfy the Court or a judge by Applicant
must
satisfy
Court.
affidavit or otherwise—

- (a.) That the applicant claims no interest in the subject-matter in dispute, other than for charges or costs ; and
- (b.) That the applicant does not collude with any of the claimants ; and
- (c.) That the applicant is willing to pay or transfer the subject-matter into Court or to dispose of it as the Court or a judge may direct.

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Order LVII.	
When titles of claimants independ- ent.	<p>*3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin but are adverse to and independent of one another.</p> <p>*4. Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons.</p> <p>*5. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.</p>
When applicant is defen- dant.	
Summons to appear.	<p>See p. 249 ; see also O. 31, r. 28.</p>
Stay of proceed- ings.	<p>*6. If the application is made by a defendant in an action, the Court or a judge may stay all further proceedings in the action.</p>
When a claimant may be made de- fendant.	<p>*7. If the claimants appear in pursuance of the summons, the Court or a judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff, and which defendant.</p>
Decision by consent.	<p>*8. The Court or a judge may, with the consent of both claimants or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as may be just.</p> <p>23 & 24 Vict. c. 126, s. 14. See p. 248.</p>
Question of law.	<p>*9. Where the question is a question of law, and the facts are not in dispute, the Court or a judge may either decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the Court. If a special case is stated, Order 34 shall, as far as applicable, apply thereto.</p> <p>23 & 24 Vict. c. 126, s. 15 ; and see O. 34 ; see also p. 248.</p>
Failure to appear.	<p>*10. If a claimant, having been duly served with a summons calling on him to appear and maintain, or relinquish, his claim, does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his appearance, the</p>

RULES OF THE SUPREME COURT.

Court or a judge may make an order declaring him, and all persons claiming under him, for ever barred against the applicant, and persons claiming under him, but the order shall not affect the rights of the claimants as between themselves.

Order
LVII

See p. 250, and Rule 7.

*11. Except where otherwise provided by statute, the judgment in any action or on any issue ordered to be tried or stated in an interpleader proceeding, and the decision of the Court or a judge in a summary way, *under Rule 8 of this Order*, shall be final and conclusive against the claimants, and all persons claiming under them, *unless by special leave of the Court or judge, as the case may be, or of the Court of Appeal.*

23 & 24 Vict. c. 126, s. 17. See *Witt v. Parker*, 46 L. J. 450, and *Dodds v. Shepherd*, 1 Ex. D. 75, and p. 249.

*12. When goods or chattels have been seized in execution by a sheriff or other officer charged with the execution of process of the High Court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court or a judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just.

23 & 24 Vict. c. 126, s. 13.

*13. Orders 31 and 36 shall, with the necessary modifications, apply to an interpleader issue; and the Court or judge who tries the issue may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for.

14. Where in any interpleader proceeding it is necessary or expedient to make one order in several causes or matters pending in several divisions, or before different judges of the same division, such order may be made by the Court or judge before whom the interpleader proceeding may be taken, and shall be entitled in all such causes or matters; and any such order (subject to the right of appeal) shall be binding on the parties in all such causes or matters.

*15. The Court or a judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable.

C. L. P. Act, 1860, s. 14.

RULES OF THE SUPREME COURT.

Order LVIII.

ORDER LVIII.

APPEALS TO THE COURT OF APPEAL.

How
made.

See O. 59,
rr. 1 and 4.

1. All appeals to the Court of Appeal shall be by way of rehearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part.

See p. 234. J. A., O. 58, r. 2. Two counsel are heard on each side in the Court of Appeal: *Sneesby v. Lancashire and Yorkshire Ry. Co.*, 1 Q. B. D. 42, C. A. See also *Clarke v. Bradlaugh*, 7 Q. B. D. 38, C. A., as to cross appeals on cross demurrers. Person not a party, if affected, may appeal: *Re Markham*, 16 Ch. D. 1, C. A. As to appeals against only part of judgment, see *West v. Donovan*, 27 W. R. 697, C. A.; *Cracknall v. Janson*, 11 Ch. D. 1, C. A.; and also *Duchess of Westminster v. Silver Ore Co.*, 10 Ch. D. 308, C. A.

Notice of.

2. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as the Court of Appeal may think fit.

J. A., O. 58, r. 3. See p. 287.

Time of
notice.

3. Notice of appeal from any judgment, whether final or interlocutory, or from a final order, shall be a fourteen days notice, and notice of appeal from any interlocutory order shall be a four days notice.

Judgment of Court of Appeal cannot be altered by Court of Appeal. See p. 295. J. A., O. 58, r. 4.

Powers of
Court of

4. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the High Court,

RULES OF THE SUPREME COURT.

together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court. The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may be just.

Order
LVIII.

Appeal as
to further
evidence,
&c.

J. A., O. 58, r. 5. See p. 289.

5. If upon hearing of an appeal, it shall appear to the Court of Appeal that a new trial ought to be had, it shall be lawful for the said Court of Appeal, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had.

J. A., O. 58, r. 5a. See p. 233.

6. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied, he shall within the time specified in the next Rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred by the Act upon the Court of Appeal, but may, in

Cross
appeal.

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- Order LVIII.** the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.
- J. A., O. 58, r. 6. See *Purnell v. G. W. R. Co.*, 1 Q. B. D. 636, and *Ex parte Payne*, 11 Ch. D. 540, C. A. See p. 279.
- Length of notice by respondent.** 7. Subject to any special order which may be made, notice by a respondent under the last preceding Rule shall in the case of any appeal from a final judgment be an eight days notice, and in the case of an appeal from an interlocutory order a two days notice.
- J. A., O. 58, r. 7.
- Entry of judgment.** 8. The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.
- Setting down appeal.**
- J. A., O. 58, r. 8. See O. 39, r. 1, and O. 40, rr. 3—5. See *Re National Funds Assurance Co.*, 4 Ch. D. 305, C. A., and *Re Harker*, 10 Ch. D. 613, C. A.
- Time under Companies Act, 1862.** 9. The time for appealing from any order or decision made or given in the matter of the winding-up of a company under the provisions of the Companies Act, 1862, or any Act amending the same, or any order or decision made in the matter of any bankruptcy, or in any other matter not being an action, shall be the same as the time limited for appeal from an interlocutory order under Rule 15.
- J. A., O. 58, r. 9. See p. 290. The time under Rule 15 is twenty-one days. See *Ex parte Tucker*, 12 Ch. D. 308.
- Ex parte applications.** 10. Where an ex parte application has been refused by the Court below, an application for a similar purpose may be made to the Court of Appeal ex parte within four days from the date of such refusal, or within such enlarged time as a judge of the Court below or of the Court of Appeal may allow.
- J. A., O. 58, r. 10.
- Evidence in Court below.** 11. When any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such

RULES OF THE SUPREME COURT.

question shall, subject to any special order, be brought before the Court of Appeal as follows:—

**Order
LVIII.**

(a.) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed:

(b.) As to any evidence given orally, by the production of a copy of the judge's notes, or such other materials as the Court may deem expedient.

J. A., O. 58, r. 11. See **Rule 4** as to fresh evidence.

12. where evidence has not been printed in the Court below, the Court below or a judge thereof, or the Court of Appeal or a judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Court of Appeal or a judge thereof shall otherwise order.

Printing of
evidence.

J. A., O. 58, r. 12. As to costs, see *Bigby v. Dickinson*, 4 Ch. D. 24, C. A.

13. If, upon the hearing of an appeal, a question arise as to the ruling or direction of the judge to a jury or assessors, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient.

Ruling of
judge.

Evidence.

J. A., O. 58, r. 13.

14. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may be just.

Interlocu-
tory order
not ap-
pealed
from.

J. A., O. 58, r. 14. See *Laird v. Briggs*, 15 Ch. D. 668, C. A. See pp. 280 and 291.

15. No appeal to the Court of Appeal from any interlocutory order, or from any order, whether final or interlocutory, in any matter not being an action, shall, except by special leave of the Court of Appeal, be brought after the expiration of twenty-one days, and no other appeal shall, except by such leave, be brought after the expiration of one year. The said respective periods shall be calculated, in the case of an appeal from an order in chambers, from the time when such order was pronounced, or when the appellant first had notice thereof, and in all other cases, from the time at which the judgment or order is signed, entered, or otherwise perfected,

Time to
appeal.

Other
cases.

RULES OF THE SUPREME COURT.

Order LVIII.

Security for costs.

or, in the case of the refusal of an application, from the date of such refusal. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Court of Appeal.

See p. 279. J. A., O. 58, r. 15. And see p. 290. As to time within the meaning of this Rule, see *Ex parte Saffery*, 5 Ch. D. 365, C. A.

No stay unless ordered.

16. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any judge thereof, or the Court of Appeal, may order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct.

J. A., O. 58, r. 16. See pp. 206 and 293, and Cons. O. 31, r. 2. As to costs, see *Burdick v. Garrick*, L. R. 5 Ch. 453.

First ap- plication to Court below.

17. Wherever under these Rules an application may be made either to the Court below or to the Court of Appeal, or to a judge of the Court below or of the Court of Appeal, it shall be made in the first instance to the Court or judge below.

J. A., O. 58, r. 17. *Cooper v. Cooper*, 2 Ch. D. 492.

Appeal. Motion.

*18. Every application to a judge of the Court of Appeal shall be by motion, and the provisions of Order 52 shall apply thereto.

*19. On an appeal from the High Court, interest for such time as execution has been delayed by the appeal shall be allowed unless the Court or a judge otherwise orders, and the taxing officer may compute such interest without any order for that purpose.

As to the allowance of interest generally, see Cons. O. 42, rr. 9—11; *Wheeler v. Gill*, L. R. 19 Eq. 316; and as to interest on costs, *Shroeder v. Cleugh*, 46 L. J. C. P. 365.

Order LIX.

ORDER LIX.

DIVISIONAL COURTS.

Proceed- ings to be taken be- fore.

1. The following proceedings and matters shall continue to be heard and determined before Divisional Courts; but nothing herein contained shall be construed so as to take away or limit the power of a single judge to hear and determine any such proceedings or matters in any case in

RULES OF THE SUPREME COURT.

which he has heretofore had power to do so, or so as to Order LIX.
require any interlocutory proceeding therein heretofore
taken before a single judge to be taken before a Divisional
Court:—

- (a.) Proceedings on the Crown side of the Queen's Bench Division ;
- (b.) Appeals from Revising Barristers, and proceedings relating to Election Petitions, Parliamentary and Municipal ;
- (c.) Appeals under section 6 of the County Courts Act, 1875 ;
- (d.) Proceedings on the Revenue side of the *Queen's Bench* Division ;
- (e.) Proceedings directed by any Act of Parliament to be taken before the Court, and in which the decision of the Court is final ;
- (f.) Cases stated by the Railway Commissioners under the Act 36 & 37 Vict. c. 48 ;
- (g.) Cases of Habeas Corpus, in which a judge directs that an order nisi for the writ, or the writ be made returnable before a Divisional Court ;
- (h.) Special cases where all parties agree that the same be heard before a Divisional Court ;
- (i.) Appeals from chambers in the Queen's Bench Division ;
- (j.) Applications for new trials where there has been a trial with a jury.

J. A., O. 57a, r. 1. See p. 229.

2. Where, by sect. 17 of the Appellate Jurisdiction Act, 1876, or by these Rules, any application ought to be made to, or any jurisdiction exercised by the judge by whom a *cause or matter* has been tried, if such judge shall die or cease to be a judge of the High Court, or if such judge shall be a judge of the Court of Appeal, or if for any other reason it shall be impossible or inconvenient that such judge should act in the matter, the President of the Division to which the cause or matter belongs may either by a special order in any *cause or matter*, or by a general order applicable to any class of causes or matters, nominate some other judge to whom such application may be made, and by whom such jurisdiction may be exercised.

To whom
applica-
tion made
on death
or removal
of original
judge.

J. A., O. 57a, r. 2. See O. 5, r. 9, and O. 55, r. 11.

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Order LIX.

Appeal
from
award on
question
of law.

*3. Where a compulsory reference to arbitration has been ordered, any party to such reference may appeal from the award or certificate of the arbitrator or referee upon any question of law ; and on the application of any party the Court may set aside the award on any ground on which the Court might set aside the verdict of a jury. Such appeal shall be to a Divisional Court, who shall have power to set aside the award or certificate, or to remit all or any part of the matter in dispute to the arbitrator or referee, or to make any order with respect to the award or certificate or all or any of the matters in dispute that may be just.

See O. 64, r. 14, and O. 52, rr. 2 and 4, and p. 30.

Appeals
from
inferior
Courts.

4. Every judge of the High Court of Justice for the time being shall be a judge to hear and determine appeals from inferior Courts, under section 45 of the Principal Act. All such appeals (except Probate and Admiralty appeals from inferior Courts, *and from justices, which shall be to a Divisional Court of the Probate, Divorce and Admiralty Division*), shall be entered in one list by the officers of the Crown Office *Department of the Central Office*, and shall be heard by such Divisional Court of the Queen's Bench Division as the *Lord Chief Justice of England* shall from time to time direct.

J. A., O. 58, r. 19. See pp. 234 and 287.

Appeal
from an
award as
to salvage.
Time.

*5. On an appeal from an award of justices or their umpire on a dispute with respect to salvage, the appellant shall, within ten days after the date of the award, give notice in writing to the justices to whom the matter was referred of his intention to appeal, and shall within twenty days from the date of the award give to the opposite party notice in writing of motion to appeal, and shall file an affidavit of the service of the said notice of appeal and of the said notice of motion, together with copies of the said notices, and no other proceeding shall be necessary for the institution of the said appeal.

See Rule 6.

Copies of
award and
proceed-
ings.

*6. In such appeal as in the last preceding Rule mentioned, if the same is to be heard without any pleadings and without any evidence other than that which was adduced before the Court appealed from, the appellant shall, within ten days from the filing of the proceedings and award, leave in the Admiralty Registry printed copies thereof; and if he shall not do so, the Court may on the application of the respondent dismiss the appeal with costs.

RULES OF THE SUPREME COURT.

ORDER LX.

Order LX.

OFFICERS.

1. All officers who at the time when these Rules come into operation are attached to the Chancery Division of the High Court shall remain attached to the said Division; and all officers who at the time aforesaid are attached to the Queen's Bench Division shall remain attached to the said Division; and all officers who at the time aforesaid are attached to the Probate, Divorce and Admiralty Division shall remain attached to the said Division.

To remain attached to the Divisions to which they belong.

J. A., O. 60, r. 1.

2. Officers attached to any Division shall follow the appeals from the same Division, and shall perform in the Court of Appeal analogous duties in reference to such appeals as the registrars and officers of the Court of Chancery usually performed as to rehearings in the Court of Appeal in Chancery, and as the masters and officers of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively performed as to appeals heard by the Court of Exchequer Chamber.

Duties in Court of Appeal.

J. A., O. 60, r. 2. See O. 71.

3. The office of master of the Supreme Court of Judicature shall be deemed to be substituted for the several offices specified in the first part of the first schedule to the Supreme Court of Judicature (Officers) Act, 1879, and all enactments and documents referring to any of those offices, or to any of the persons holding them, shall, unless the context otherwise requires, be construed and have effect accordingly.

Master of Supreme Court.

J. A., O. 60, r. 3.

4. Where by the practice of the Chancery Division, recognisances are required to be given, such recognisances shall be given to the two senior chief clerks for the time being of the judge to whom the cause or matter is assigned; and when the same are, by any judgment or order, directed to be vacated, the proper officer shall, on due notice thereof, attend one of the said chief clerks, who shall thereupon vacate such recognisances in the usual manner.

Recognisances, to whom given.

As to the giving and vacating of recognisances, see Cons. O. 42, rr. 12—14.

RULES OF THE SUPREME COURT.

Order LXI.

ORDER LXI.

CENTRAL OFFICE.

Depart-
ments of
Central
Office.

1. The Central Office shall, for the convenient despatch of business, be divided into the departments specified in the first column of the following scheme, and the business of the office shall be distributed among the departments in accordance with that scheme, *and shall be performed by the several officers and clerks in the said office who are now charged with the same or similar duties, and by such others as may from time to time be appointed by lawful authority for that purpose.

The latter part of this Rule is new. J. A., O. 60a, r. 1.

Scheme.

Name of Department.	Business.
1. Writ, appearance, and judgment.	<p>The sealing and issue of writs of summons for the commencement of actions.</p> <p>The entry in the Cause Book of writs of summons, appearances, and judgments.</p> <p>The sealing and issue of notices for service under Order 16, rule 48.</p> <p>The receipt and filing of pleadings and notices delivered on entry of judgment.</p> <p>The transaction of all business heretofore conducted in the Record and Writ Office, except such part thereof as is transacted in the Record Department.</p>
2. Summons and Order.	<p>The issue of summonses in the Queen's Bench Division, and the drawing up of all Orders made either in court or in chambers in that Division.</p>
3. Filing and Record.	<p>The filing of all affidavits to be filed in the Central Office, and all depositions to be used in the Chancery Division, and such other documents as may from time to time be directed by the masters to be filed, and the making and examination of office copies of documents filed in the department.</p> <p>The custody of all deeds and documents ordered to be left with the masters.</p> <p>The business heretofore performed in the Report Office under the direction and control of the Clerks of Records and Writs.</p>

RULES OF THE SUPREME COURT.

Name of Department.	Business.	Order LXXI.
4. Taxing .	The taxation of costs in the Queen's Bench Division, except such costs as have heretofore been taxed in the Queen's Remembrancer's Office or the Crown Office.	
5. Enrolment .	The business heretofore performed in the Enrolment Office.	
6. Judgments and married women's acknowledgments.	The registry of judgments, execution, &c., and the registry of acknowledgments of deeds by married women.	
7. Bills of Sale .	The registry of bills of sale and other duties connected therewith.	
8. Queen's Remembrancer.	The business heretofore performed in the Queen's Remembrancer's Office.	
9. Crown Office .	The business heretofore performed in the Crown Office.	
10. Associates .	The business heretofore performed in the Associates' Offices.	

J. A., O. 60a, r. 1. The column containing the staff is omitted.

2. It shall be the special duty of one of the masters to be present at, and control the business of, the Central Office, and to give the necessary directions with respect to questions of practice and procedure relating to the business thereof. The masters shall select five of their number to discharge this duty in turn, according to a rota to be fixed by themselves, *and each of such masters according to his turn shall discharge such duty daily for a period of not less than one month at a time.*

Master to direct practice.

J. A., O. 60a, r. 2.

3. A sufficient number of masters, not being less than three, shall, except in vacation, attend each day at the Central Office to tax costs. In vacation one master shall attend daily for that purpose. The taxing masters shall be selected according to a rota to be fixed by the masters.

Taxing masters.

J. A., O. 60a, r. 3.

*4. The arrangements made under the two last preceding Rules shall be publicly announced in such manner as the Lord Chief Justice of England shall from time to time direct.

Announcement of arrangements under rr. 2 and 3.

RULES OF THE SUPREME COURT.

Order LXL
Oaths. 5. Every master, and every first and second-class clerk in the Filing and Record Department, shall, by virtue of his office, have authority to take oaths and affidavits in the Supreme Court.

J. A., O. 60a, r. 4.

Seals. 6. The official seals to be used in the Central Office shall be such as the Lord Chancellor from time to time directs.

J. A., O. 60a, r. 5.

Office copies. 7. All copies, certificates, and other documents appearing to be sealed with a seal of the Central Office shall be presumed to be office copies or certificates or other documents issued from the Central Office, and if duly stamped may be received in evidence, and no signature or other formality, except the sealing with a seal of the Central Office, shall be required for the authentication of any such copy, certificate, or other document.

J. A., O. 60a, r. 5.

Judgment not to be enrolled. *8. It shall not be necessary to enrol any judgment or order, whether dated before or since the commencement of the principal Act.

Hastie v. Hastie, 2 Ch. D. 304.

Enrolment of deeds. 9. All deeds which by any statute or statutory rule are directed or permitted to be enrolled in any of the courts whose jurisdiction has been transferred to the High Court of Justice may be enrolled in the Enrolment Department of the Central Office.

J. A., O. 60a, r. 6. *Allan v. U. K. Telegraph Co.*, 24 W. R. 898.

Scheme under Ry. Co.'s Act, 1867. *10. A scheme under the Railway Companies Act, 1867, shall be enrolled in the Enrolment Department of the Central Office.

O. Jan. 24, 1868, 28. *Morgan*, p. 285.

Confirmation order. *11. A scheme under the Act in Rule 10 mentioned shall not be enrolled unless notice of the order confirming it has at least once in every entire week, reckoned from Sunday morning to Saturday evening, which elapses between the pronouncing of the order and the expiration of 30 days from the pronouncing thereof, been inserted in such two newspapers as shall have been appointed by the judge for the insertion of advertisements under the order made pursuant to that Act, nor unless the newspapers

Advertisement.

RULES OF THE SUPREME COURT.

containing those notices are produced to the proper officer when the scheme is presented for enrolment. **Order LXI.**

See Rule 22 of same Order, and Morgan, p. 284.

*12. All acknowledgments required for the purpose of enrolling any deed or other document may be made before the Clerk of Enrolments or before a master, as occasion may require. **Acknowledgments for purpose of enrolling.**

Cons. O. 1, r. 40.

*13. The records of all deeds and recognisances enrolled shall be sent by the Clerk of Enrolments, *so long as that office shall continue, or by the proper officer of the Enrolment Department*, to the Public Record Office, Rolls Yard, within two years from the time of the enrolment thereof. **Records of deeds and recognisances.**

Cons. O. 1, r. 41.

*14. No recognisance shall be enrolled after six months from the acknowledgment thereof, except under special circumstances, and by an order made by the Court or a judge upon motion for the enrolment thereof after that time. **Time for enrolment limited.**

See, too, O. 60, r. 4.

*15. No order made on a petition, and no order to make a submission to arbitration, or an award, an order of the Court, and no judgment or order wherein any written admissions of evidence, are entered as read, shall be passed, until the original petition, submission to arbitration, or award, or written admissions of evidence, shall have been filed in the *Central Office, or, where the proceedings are taken in a District Registry, in the District Registry*, and a note thereof made on the judgment or order by the proper officer. **Filing before order passed.**

Cons. O. 23, r. 23.

*16. Upon every pleading or other proceeding which is filed in the *Central Office*, the date of filing the same shall be printed or written. **Date of filing to be printed on pleading.**

Cons. O. 1, r. 45.

*17. Proper indexes or calendars to the files or bundles of all *documents* filed at the *Central Office* shall be kept, so that the same may be conveniently referred to when required; and such indexes or calendars and documents shall, at all times during office hours, be accessible to the public on payment of the usual fee. **Indexes.**

Cons. O. 1, r. 46.

RULES OF THE SUPREME COURT.

Order LXI. *18. *There shall also be entered in proper books kept for the purpose the time when any certificate is delivered at the Central Office to be filed, with the name of the cause and the date of the certificate ; and the like entry shall be made of the time of delivery of every other document filed at the Central Office ; and such books shall, at all times during office hours, be accessible to the public on payment of the usual fee.*

Cons. O. 1, r. 47.

All documents to be marked. *19. *Every judgment, order, certificate, petition, or document made, presented, or used in any cause or matter, shall be distinguished by having plainly written or stamped on the first page thereof the year, the letter, and the number by which the cause or matter is distinguished in the books kept at the Central Office.*

Cons. O. 1, r. 48.

Dates of orders and certificates. *20. *There shall also be entered in the Cause Books, the date of every judgment, order, and certificate made in every cause or matter.*

Cons. O. 1, r. 49.

Reference to Registrar's book. *21. *The entry of every judgment and order in such Cause Books in the Chancery Division, shall contain a reference to the date and folio of the Registrar's book in which the judgment or order has been entered.*

Cons. O. 1, r. 50.

Judgments not to be registered after two p.m. 22. *The Registrar of Judgments shall not receive any memorandum of a judgment, execution, lis pendens, order, rule, annuity, Crown debt, or other incumbrance, or any memorandum of satisfaction relating to the same, for registration, after the hour of two in the afternoon.*

J. A., O. 60a, r. 7.

Searches and certificates of search. 23. *The Clerk of Enrolments and each of the following Registrars, namely—*

(a.) *The Registrar of Bills of Sale ;*

(b.) *The Registrar of Certificates of Acknowledgments of Deeds by Married Women ;*

(c.) *The Registrar of Judgments ;*

shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes under his custody, and issue a certificate of the result of the search.

J. A., O. 60a, r. 8.

RULES OF THE SUPREME COURT.

*24. For the purpose of enabling all persons to obtain precise information as to the state of any cause or matter, and to take the means of preventing improper delay in the progress thereof, the *proper officer* shall at the request of any person, whether a party or not to the cause or matter inquired after, but on payment of the usual fee, give a certificate specifying therein the dates and general description of the several proceedings which have been taken in such cause or matter in *the Central Office*.

Order LXI

Certificate
of dates
and pro-
ceedings
in action.

Cons. O. 1, r. 53.

25. The Masters shall *execute the office* of the Registrar for the purposes of the Bills of Sale Act, 1878, and the Bills of Sale Act, 1878, Amendment Act, 1882, and any one of the Masters may perform all or any of the duties of the Registrar.

Registrar
of Bills of
Sale Act.

J. A., O. 60a, r. 9.

26. A memorandum of satisfaction may be ordered to be written upon a registered copy of a bill of sale, on a consent to the satisfaction, signed by the person entitled to the benefit of the bill of sale, and verified by affidavit, being produced to the Registrar, and filed in the Central Office.

Memoran-
dum of
satisfac-
tion of bill
of sale.

J. A., O. 60a, r. 10.

27. Where the consent in the last preceding Rule mentioned cannot be obtained, the Registrar may, on application by summons, and on hearing the person entitled to the benefit of the bill of sale, or on affidavit of service of the summons on that person, and in either case on proof to the satisfaction of the Registrar that the debt (if any) for which the bill of sale was made has been satisfied or discharged, order a memorandum of satisfaction to be written upon a registered copy thereof.

J. A., O. 60a, r. 10.

28. No affidavit or record of the Court shall be taken out of the Central Office without the order of a judge or Master, and no subpoena for the production of any such document shall be issued.

Docu-
ments not
to be
removed
from Cen-
tral Office.

J. A., O. 60a, r. 11.

29. Any officer of the Central Office, being required to attend with any record or document at any assizes or at any Court or place out of the *Royal Courts of Justice*, shall

Expenses
of officer
attending

RULES OF THE SUPREME COURT.

Order LXI. be entitled to require that the solicitor or party desiring his attendance shall deposit with him a sufficient sum of money to answer his just fees, charges, and expenses in respect of such attendance, and undertake to pay any further just fees, charges, and expenses which may not be fully answered by such deposit.

with re-
cords.

Cons. O. 1, r. 43.

**Docu-ments de-
posited for
safe cus-
tody in
chambers.** *30. Where any deeds or other documents are ordered to be left or deposited, whether for safe custody or for the purpose of any inquiry in chambers, or otherwise, the same shall be left or deposited in the Central Office, and shall be subject to such directions as may be given for the production thereof.

Cons. O. 42, r. 3.

**Filing cer-
tificates,
&c.** *31. All certificates of the chief clerk of a judge and all petitions and written admissions of evidence whereon any order is founded, and all submissions to arbitration made orders of the Court, shall be transmitted to and left at the *Central Office*, to be there filed or preserved. And all office copies thereof, or of any part thereof that may be required, shall be ready to be delivered to the party requiring the same within forty-eight hours after the same shall have been bespoken.

Office
copies
within 48
hours.

Cons. O. 1, r. 44, which adds : After the same shall have been signed by the judge in cases where his signature is required.

Forma. 32. The Forms contained in the Appendices shall be used in or for the purposes of the Central Office, with such variations as circumstances may require.

J. A., O. 60a, r. 12.

33. The Masters may from time to time prescribe the use in or for the purpose of the Central Office of such modified or additional forms as may be deemed expedient.

J. A., O. 60a, r. 12. See Wilson, p. 702.

**Order
LXII.**

*ORDER LXII.

REGISTRARS OF THE CHANCERY DIVISION.

**Atten-
dance in** 1. The Registrars of the Chancery Division shall attend the judges of the Chancery Division, and the Court of

RULES OF THE SUPREME COURT.

Appeal upon the hearing of appeals from the Chancery Division, in rotation *as they may arrange amongst themselves, and in default of arrangement* week by week on alternate days.

**Order
LXII.**

Chancery
Division.

Cons. O. 1, r. 17.

2. All *judgments* and orders drawn up by the Registrars, or by the chief clerks to the judges, and all *præcipes* for attachments, and such other documents (if any) as, according to the present practice or the practice for the time being, ought to be entered by the entering clerks to the Registrars, shall be entered by them without abbreviations, and in a clear and legible hand, under the direction of the Senior Registrar for the time being, within one clear day after the same shall be left for entry, and all such entries shall be examined by one of the said entering clerks, and be marked with his initials to denote such examination.

Entry of
judg-
ments, &c.

Cons. O. 1, r. 18.

3. Proper calendars or indexes of such entries shall be made by the entering clerks, so that the same may be conveniently referred to when required, and the calendars or indexes and the books in which the entries are made shall when completed be transmitted to *the Filing and Record Department of the Central Office* to be there preserved, and shall at all times during office hours be accessible to the public on payment of the usual fee.

Indexes to
entries.

Cons. O. 1, r. 19.

4. At the time of bespeaking a judgment or order, the party bespeaking the same shall leave with the Registrar his counsel's brief, and such other documents as may be required by the Registrar for the purpose of enabling him to draw up the same.

Docu-
ments to
be left
with.

Cons. O. 1, r. 20.

5. Every *judgment* or order shall be bespoken, and the briefs and other documents mentioned in the last preceding Rule shall be left with the Registrar within seven days after the judgment or order is pronounced or finally disposed of by the Court *or judge*.

Decree
or order to
be be-
spoken.

Cons. O. 1, r. 21.

6. In case any *judgment* or order is not bespoken, and the briefs and other requisite documents are not left with

Conse-
quence of
default.

RULES OF THE SUPREME COURT.

Order LXII.

the Registrar within the time prescribed by the last preceding Rule, the Registrar may decline to draw up the judgment or order without the leave of the Court or judge.

Cons. O. 1, r. 22.

Time for settling draft of judgment to be appointed in writing.

7. At the time of delivering out the draft of any *judgment* or order which requires to be settled by the Registrar in the presence of the parties, the Registrar shall deliver out to the party on whose application the draft has been prepared, an appointment in writing of a time for settling the same.

Cons. O. 1, r. 23.

Service of notice of appointment.

8. A *notice* of the appointment shall be served on the opposite party one clear day at least before the time fixed thereby for settling the draft *judgment* or order, and the party serving the notice, and the party so served, shall attend the appointment, and produce to the Registrar their briefs, and such other documents as may be necessary to enable him to settle the draft.

Cons. O. 1, r. 24. *Re Christmas*, 19 Beav. 519.

Service of notice of appointment.

9. Service of *the notice* of appointment shall be effected by leaving *it* at the place for service of the party to be served, or by transmitting *it* by post to such party at such place for service.

Cons. O. 1, r. 25.

10. At the time fixed for settling the draft *the Registrar shall satisfy himself in such manner as he may think fit* that service of the notice of appointment has been duly effected.

Cons. O. 1, r. 26.

Time for passing judgment to be named or appointed.

11. When the draft *judgment* or order has been settled by the Registrar, he shall name a time in the presence of the several parties, or else deliver out an appointment in writing of a time for passing the *judgment* or order, and in the latter case *notice* of the appointment shall be served on the opposite party in like manner as directed by Rules 8 and 9 of this Order, with reference to an appointment to settle the draft *judgment* or order.

Cons. O. 1, r. 27.

Default in attend-

12. If any party fails to attend the Registrar's appointment for settling the draft of or passing any *judgment* or

RULES OF THE SUPREME COURT.

order, or fails to produce his briefs and such other documents as the Registrar may require to enable him to settle such draft, or pass such judgment or order, the Registrar may proceed to settle the draft, or pass the judgment or order in his absence, and the Registrar shall be at liberty to dispense with the production of counsels briefs, and to act upon such evidence as he may think fit of the actual appearance by counsel of the party failing to attend, or to produce such documents or papers as aforesaid, or may require the matter to be mentioned to the Court or judge.

**Order
LXII.**

ing ap-
pointment
with docu-
ments.

Cons. O. 1, r. 28. *Veatman v. Read*, 14 W. R. 123.

13. The Registrar may adjourn any appointment for settling the draft of or passing any *judgment* or order to such time as he may think fit, and the parties who attended the appointment shall be bound to attend such adjournment without further notice.

Adjourn-
ment of
appoint-
ment.

Cons. O. 1, r. 31.

14. Notwithstanding the preceding Rules of this Order, the Registrar shall be at liberty, in any case in which he may think it expedient so to do, to settle and pass the *judgment* or order, without making any appointment for either purpose and without notice to any party.

Settling
order
without
notice.

Cons. O. 1, r. 32.

15. The Registrar shall, at the time of any attendance before him for the purpose of settling the terms of and passing any judgment or order, if requested to do so by any party, on the ground that it is of a special nature or of unusual length or difficulty, certify, for the information of the taxing officer, whether in his opinion any special allowance ought to be made in taxation of costs in respect thereof.

Special
allowance
for costs.
Cf. O. 65,
r. 27 (22).

Cf. O. 65, r. 27 (1) (12).

16. All orders for the payment or transfer of money or securities into Court to the account or credit of the Paymaster General, and for the payment or transfer of money or securities out of Court by the Paymaster General shall be drawn up in conformity with such rules relating thereto as shall be from time to time made under the Court of Chancery Funds Act, 1872, or any Act amending the same.

Orders for
payment
into or out
of Court.

See Chancery Funds Rules, 1874. *Morgan*, p. 402.

17. The Registrars of the Chancery Division shall keep distinct lists of the causes and matters set down to be heard before each judge of that Division.

List of
matters
set down
to judge.

RULES OF THE SUPREME COURT.

Order LXII.

Answering
petitions.
Orders
upon
petitions.

18. All petitions which require to be answered, shall be answered in the name of the Senior Registrar for the time being, and any orders on petitions which, according to the practice formerly prevailing in the Chancery Division, were drawn up, passed, and entered in the office of the Secretaries of the Master of the Rolls, shall be drawn up, passed, and entered by or under the direction of the Registrars of the Chancery Division.

As to orders on petitions of course, see Cons. O. 23, r. 17.

Order LXIII.

ORDER LXIII.

SITTINGS AND VACATIONS.

Michael-
mas.
Hilary.
Easter.

Trinity.

1. The sittings of the Court of Appeal and the sittings in London and Middlesex of the High Court of Justice shall be four in every year, viz., the Michaelmas sittings, the Hilary sittings, the Easter sittings, and the Trinity sittings. The Michaelmas sittings shall commence on the 2nd of November and terminate on the 21st of December; the Hilary sittings shall commence on the 11th of January and terminate on the Wednesday before Easter; the Easter sittings shall commence on the Tuesday after Easter week and terminate on the Friday before Whit Sunday; and the Trinity sittings shall commence on the Tuesday after Whitsun week and terminate on the 8th of August.

J. A., O. 61, r. 1.

Queen's
Birthday.

*2. It shall not be necessary for the Court of Appeal or the High Court of Justice to sit on the day appointed to be kept as the Queen's Birthday.

Offices.

*3. The sittings of the several offices of the Supreme Court shall extend over the whole of the four periods between the vacations.

Long,
Xmas,
Easter,
Whitsun
vacations.

4. The vacations to be observed in the several Courts and offices of the Supreme Court shall be four in every year, viz., the Long vacation, the Christmas vacation, the Easter vacation, and the Whitsun vacation. The Long vacation shall commence on the 10th of August and terminate on the 24th of October: the Christmas vacation shall commence on the 24th of December and terminate on the 6th of January: the Easter vacation shall commence on Good Friday and terminate on Easter Tuesday: and the

RULES OF THE SUPREME COURT.

Whitsun vacation shall commence on the Saturday before Whit Sunday and shall terminate on the Tuesday after Whit Sunday. Order LXIII.

J. A., O. 61, r. 2.

5. The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively. Com-
mence-
ment and
termina-
tion.

J. A., O. 61, r. 3.

6. The several offices of the Supreme Court shall be open on every day of the year, except Sundays, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Whit Monday, Christmas Day, and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving. Offices,
when
open.

J. A., O. 61, r. 4. As to serving instruments on these days, see O. 67, r. 12.

7. The offices of each District Registrar of the High Court of Justice shall be open on every day and hour in the year on which the offices of the Registrar of the County Court of the place in which the District Registry is situate are required to be kept open. District
Registries.

J. A., O. 61, r. 4a.

8. The offices of the Supreme Court (including the Judges' chambers) shall, *save as hereinafter mentioned*, close on Saturdays at two o'clock. Saturdays.

J. A., O. 61, r. 4b.

9. The office hours in the several offices of the Supreme Court, other than the Summons and Order, Crown Office, and Associates' Departments of the Central Office, shall be from ten in the forenoon to four in the afternoon, except on Saturday and in vacation, when the offices shall close at two in the afternoon. In the excepted departments the hours shall be from eleven in the forenoon to five in the afternoon, except on Saturday and in vacation, when the hours shall be from eleven in the forenoon to three in the afternoon. Office
hours.

J. A., O. 61, r. 4c.

10. The office of the District Registry at Manchester shall not be open in any year on the five days next following Whit Monday. Manches-
ter. Whit-
suntide
vacation.

J. A., O. 61, r. 4d.

RULES OF THE SUPREME COURT.

Order LXIII.

Rota of
vacation
judges.

11. Two of the judges of the High Court shall be selected at the commencement of each Long vacation for the hearing in London or Middlesex, during vacation, of all such applications as may require to be immediately or promptly heard. Such two judges shall act as vacation judges for one year from their appointment. In the absence of arrangement between the judges, the two vacation judges shall be the two judges last appointed (whether as judges of the said High Court or of any Court whose jurisdiction is by the *Principal Act* transferred to the said High Court) who have not already served as vacation judges of any such Court, and if there shall not be two judges for the time being of the said High Court who shall not have so served, then the two vacation judges shall be the judge (if any) who has not so served and the senior judge or judges who has or have so served once only according to seniority of appointment, whether in the said High Court or such other Court as aforesaid. The Lord Chancellor shall not be liable to serve as a vacation judge.

J. A., O. 61, r. 5. Cf. J. A., 1873, s. 28. Judgment under O. 14 is vacation business if the right to it has accrued only during the vacation.

Vacation
business.

12. The vacation judges may sit either separately or together as a Divisional Court as occasion shall require, and may hear and dispose of all causes, matters, and other business, to whichever Division the same may be assigned.

Appeal.

No order made by a vacation judge shall be reversed or varied except by a Divisional Court or the Court of Appeal, or the judge who made the order. Any other judge of the High Court may sit in vacation for any vacation judge.

J. A., O. 61, r. 6. As to what is vacation business, see *In re Wigan Junction Railways Act*, L. R. 10 Ch. 541.

Who may
issue sum-
monses.

*13. Any judge of the Chancery Division whose chambers may be open for business during any vacation, or any vacation judge acting on his behalf, may issue summonses for the purpose of any proceeding before any other judge of that Division at chambers after the vacation.

Orders in
chambers.

*14. In the interval between the close of any sittings and the commencement of the next sittings, the judgments or orders of any judge may be prosecuted at the chambers of any judge by his permission; and in case the prosecu-

RULES OF THE SUPREME COURT.

tion thereof shall not be completed during such interval, the prosecution may be continued at the chambers of the same judge if and so far as he shall think fit.

Order
LXIII.

*15. Any interval between the sittings of the High Court or any Division thereof, not included in a vacation, shall, so far as the disposal of business by the vacation judges is concerned, be deemed to be a portion of the vacation.

Intervals
not being
vacations.

Compare J. A., O. 61, r. 7.

16. The Official Referees shall sit at least from 10 a.m. to 4 p.m. on every day during the Michaelmas, Hilary, Easter, and Trinity sittings of the High Court of Justice, except on Saturdays, during such sittings, when they shall sit, at least, from 10 a.m. to 1 p.m.; but nothing in this Rule shall prevent their sitting on any other days.

Official
referees.

J. A., O. 61, r. 8.

ORDER LXIV.

TIME.

Order
LXIV.

See Cons. O. 37.

1. Where by these Rules, or by any judgment or order "Month." given or made after the commencement of the *Principal Act*, time for doing any act or taking any proceeding is limited by months, *and where the word "month" occurs in any document which is part of any legal procedure under these Rules*, such time shall be computed by calendar months, *unless otherwise expressed*.

J. A., O. 57, r. 1.

2. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time.

In periods
of less than
six days
what days
not
counted.

J. A., O. 57, r. 2. *Ex parte Viney*, W. N. 1877, p. 53. See O. 63, r. 6, and note thereon.

3. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or

Where last
day is
Sunday.

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taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

J. A., O. 57, r. 3. *Taylor v. Jones*, 1 C. P. D. 87.

No amend-
ment or
delivery
of plead-
ings with-
out leave.

4. No pleadings shall be amended or delivered in the Long vacation, unless directed by a Court or a judge.

J. A., O. 57, r. 4.

Time of,
when not
reckoned.

5. The time of the Long vacation shall not be reckoned in the computation of the times appointed or allowed by these Rules for filing, amending, or delivering any pleading, unless otherwise directed by the Court or a judge.

J. A., O. 57, r. 5. Such time used, before the Jud. Acta, to be reckoned in cases not coming under Cons. O. 37, r. 13.

When an
order for
security
for costs.

*6. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed to plead, answer interrogatories, or take any other proceeding in the cause or matter.

Cons. O. 37, r. 13.

Alteration
of time.
Discretion
of Court.

7. The Court or a judge shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

J. A., O. 57, r. 6. As to the cases to which this Rule applies, see *Pilcher v. Hinde*, 11 Ch. D. 905, and *Carter v. Stubbs*, 6 Q. B. D. 119. See *Wilson*, p. 413.

Enlarge-
ment by
consent.

8. The time for delivering, amending, or filing any pleading, answer, or other document may be enlarged by consent in writing, without application to the Court or a judge.

J. A., O. 57, r. 6a. Cf. O. 65, r. 27 (24).

Admi-
ralty.

9. In Admiralty actions the Court or a judge shall have power at any stage of the proceedings in *any* such action, upon a motion or summons by either party, for the trial to take place on an early day to be appointed by the Court or a judge, to appoint that such trial shall take place on any day or within any time which the Court or judge

RULES OF THE SUPREME COURT.

shall think fit; and for such purpose the Court or judge shall have power upon such motion or summons to dispense with the giving of notice of trial, or to abridge the time or times appointed by these Rules for giving such notice, for the delivery of pleadings, or for doing any other act or taking any other proceeding in the action, upon such terms (if any) as the nature of the case may require.

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J. A., O. 57, r. 7.

*10. The delays required by these Rules with respect to the taking of bail in Admiralty actions may be dispensed with by consent of the solicitors in the action. Bail.

11. Service of pleadings, notices, summonses, orders, rules, and other proceedings, shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon. Service effected after six in the afternoon on any weekday except Saturday shall, *for the purpose of computing any period of time subsequent to such service*, be deemed to have been effected on the following day. Service effected after two in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday. Service.

J. A., O. 57, r. 8. Under R. G. H. T. 1853, 164, seven o'clock was the hour fixed. As to notice by telegram, see p. 240; and as to hour of service, see p. 150.

*12. In any case in which any particular number of days, not expressed to be clear days, is prescribed by these Rules, the same shall be reckoned exclusively of the first day and inclusively of the last day. First day
exclusive,
last day
inclusive.

R. G. H. T., r. 174.

*13. In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed. A summons on which no order has been made shall not, but notice of trial although countermanded shall be deemed a proceeding within this Rule. When
there have
been no
proceed-
ings for a
year.

This Rule is important.

*14. An application to set aside an award may be made at any time before the last day of the sittings next after such award has been made and published to the parties. Setting
aside
award.

See p. 224. The time is extended by this Rule.

*15. In Admiralty actions a caveat whether against the issue of a warrant, the release of property, or the payment Admiralty
caveat.

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**Order
LXIV.**

of money out of the Admiralty Registry, shall not remain in force for more than six months from the date thereof.

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ORDER LXV.

COSTS.

**Discretion
as to costs.**

**Out of an
estate.**

**Trial by
jury.**

**When
issues of
fact and
law raised.**

**Removal.
Costs of
inferior
Court.**

**When
trial in
County
Court
ordered.**

**When
solicitor**

1. Subject to the provisions of the Acts *and these Rules*, the costs of and incident to all proceedings in the *Supreme Court, including the administration of estates and trusts*, shall be in the discretion of the Court or judge; provided that nothing herein contained shall deprive an *executor, administrator, trustee, or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings*, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in the *Chancery Division*: Provided also that, where any action, *cause, matter*, or issue is tried with a jury, the costs shall follow the event, unless the judge by whom such action, cause, matter, or issue is tried, or the Court, shall, *for good cause*, otherwise order.

J. A., O. 55, r. 1. See *Hints to Solicitors*, ad locum.

*2. When issues in fact and law are raised upon a claim or counterclaim, the costs of the several issues, respectively, both in law and fact, shall, unless otherwise ordered, follow the event.

Baines v. Bromley, 6 Q. B. D. 695.

*3. If a cause be removed from an inferior Court, having jurisdiction in the cause, the costs in the Court below shall be costs in the cause.

Re Brandreth, 9 Ch. D. 618.

*4. Where an action is ordered to be tried in a County Court under the provisions of 19 & 20 Vict. c. 108, s. 26, the costs of the action shall, subject to the provisions of the Principal Act and these Rules, follow the event, unless by the Registrar's certificate of the result of the trial it shall appear that the judge before whom the action was tried was of opinion that the question of costs ought to be referred to a judge of the High Court, in which case no costs shall be recovered unless ordered by the Court or a judge.

See r. 12. *Wilson*, p. 206.

*5. Where upon the trial of any cause or matter it appears that the same cannot conveniently proceed by

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reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court or judge, and which according to the practice ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the Court or judge shall think fit to award.

**Order
LXV.**

neglects to
attend.

Hints to Solicitors, p. 107 and p. 111. See also as to penalty for default in appearance, O. 12, r. 15.

6. In any cause or matter in which security for costs is required, the security shall be of such amount, and be given at such times, and in such manner and form, as the Court or a judge shall direct.

Security
for.

On appeal,
O. 58, r. 15.

J. A., O. 55, r. 2. See also O. 69, r. 4. See p. 99 and p. 293.

7. Where a bond is to be given as security for costs, it shall, unless the Court or a judge shall otherwise direct, be given to the party or person requiring the security, and not to an officer of the Court.

Bond
given for
security.

J. A., O. 55, r. 3. Cf. O. 69, r. 6.

*8. In causes and matters commenced after these Rules come into operation, solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "lower scale" in Appendix N. in all causes and matters, and no higher fees shall be allowed in any case, except such as are by this Order otherwise provided for; and in causes and matters pending at the time when these Rules come into operation, to which the higher scale of costs previously in force was applicable, the same scale shall continue to be applied.

When
higher
scale
allowed.

That is, unless otherwise ordered under R. 9.

*9. The fees set forth in the column headed "higher scale" in Appendix N. may be allowed, either generally in any cause or matter, or as to the costs of any particular application made, or business done, in any cause or matter, if, on special grounds arising out of the nature and importance, or the difficulty or urgency of the case, the Court or a judge shall, at the trial or hearing, or further consideration of the cause or matter, or at the hearing of any application therein, whether the cause or matter shall or shall not be brought to trial or hearing or to further consideration (as the case may be), so order; or if the taxing officer, under directions given to him for that purpose by the Court or a judge, shall think that such allowance ought to be so made upon such special grounds as aforesaid.

Higher
scale on
special
grounds.

Pooley v. Driver, 5 Ch. D. 459. *Wilson*, p. 609. See Costs, O. 6, r. 3.

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<p>Order LXV.</p> <hr/> <p>Discretion of taxing officer. This over- rules <i>Corticene Floor Co. v. Tull,</i> 27 W. R. 273.</p> <p>Improp- erly in- curred.</p> <p>Miscon- duct of solicitor.</p> <p>Reference to Taxing Master.</p>	<p>*10. Upon any reference to a taxing officer to tax a bill of costs of a solicitor for the purpose of ascertaining the amount due to such solicitor in respect thereof from the person to be charged therewith, if such bill shall include charges for business done in any cause or matter, the taxing officer may allow the fees set forth in the column headed "higher scale" in Appendix N. in respect of such cause or matter, or in respect of any particular application made or business done therein, if on such special grounds, as are in the last preceding Rule mentioned, he shall think that such allowance ought to be so made.</p> <p>*11. If in any case it shall appear to the Court or a judge that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court or judge may call on the solicitor of the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the solicitor and his client, and also (if the circumstances of the case shall require) why the solicitor should not repay to his client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require. The Court or judge may, if they or he think fit, refer the matter to a taxing officer for inquiry and report; and direct the solicitor in the first place to show cause before such taxing officer, and may also, if they or he think fit, direct or authorise the official solicitor of the Supreme Court to attend and take part in such inquiry. Such notice (if any) of the proceedings or order shall be given to the client in such manner as the Court or judge may direct. Any costs of the official solicitor shall be paid by such parties, or out of such funds as the Court or a judge may direct; or, if not otherwise paid, may be paid out of such moneys (if any) as may be provided by Parliament.</p>
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Cf. O. 2, r. 2, and O. 19, r. 5. *This Rule is most important.*

<p>Of recover- ing £50 on contract.</p>	<p>*12. In actions founded on contract, in which the plaintiff recovers, by judgment or otherwise, a sum (exclusive of costs) not exceeding £50, he shall be entitled to no more costs than he would have been entitled to had he</p>
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brought his action in a County Court, unless the Court or a judge otherwise orders.

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See r. 4. As to number of counsel, see r. 46. The limit in tort is unaltered.

*13. Where the Court or a judge appoints one of the solicitors of the Court to be guardian ad litem of an infant or person of unsound mind, the Court or judge may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid either by the parties or some one or more of the parties to the cause or matter in which such appointment is made, or out of any fund in Court in which such infant or person of unsound mind may be interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require.

Upon ap-
pointment
of guard-
ian ad
litem.

Cons. O. 40, r. 4.

*14. A set-off for damages or costs between parties may be allowed notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought.

Set off.
Solicitor's
lien.

Cf. R. S. C., Costs, r. 19. See Hints to Solicitors, pp. 188, 204.

*15. Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed.

Of award.

*16. One day's notice of taxing costs, together with a copy of the bill of costs and affidavit of increase (if any), shall be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor, in all cases where a notice to tax is necessary.

Notice of
taxation.

*17. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his solicitor or guardian.

18. Every reference for the taxation of costs in the Chancery Division shall be made to the Taxing Master in rotation; provided that in any case where there shall have been any former taxation in the same cause or matter, or in any summons under Order 55, rules 3 or 4, relating to the same estate or trust, the reference shall be to the Taxing Master before whom such former taxation took place.

Who is to
tax.

Cons. O. 40, r. 2.

19. The Taxing Masters shall be respectively assistant to each other, and in the discharge of their duties; and, for the better despatch of the business of their respective offices, any Taxing Master may tax or assist in the tax-

Taxing
Masters to
assist each
other.

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tion of a bill of costs which has been referred to any other Taxing Master for taxation, and for ascertaining what is due in respect of such costs, and in such case shall certify accordingly.

Cons. O. 40, r. 8.

When necessary for Taxing Master to inspect documents.

20. Where, upon the taxation of any bill of costs in the Chancery Division, it appears to the Taxing Master that for the purpose of duly taxing the same it is necessary to inspect any books, papers, or documents, relating to the cause or matter in the chambers of any judge, the Taxing Master shall be at liberty to request the Chief Clerk of such judge to cause the same to be transmitted to the office of the Taxing Master, and also to request such Chief Clerk to certify any proceedings in the said chambers which may be comprised in the bill of costs under taxation, and in such cases the Chief Clerk, when and so soon, and at and for such times as the due transaction of the business at the said chambers will permit, shall direct such books, papers and documents, to be transmitted to the office of the Taxing Master for his use during the taxation, and shall certify the proceedings which have taken place in the said chambers according to the request of the Taxing Master; and after the costs in respect of which such request of the Taxing Master was made shall have been certified the Taxing Master shall cause the same books, papers, and documents, which have been so transmitted to his office, if then remaining there, to be returned to the chambers of the judge.

Documents transmitted from judge's chambers to master.

*21. When any book, paper, or document, shall be transmitted from the chambers of a judge to the office of a Taxing Master, a memorandum of such transmission shall be made and signed by the Taxing Master or the clerk of the Taxing Master, at whose request such book, paper, or document, may be transmitted, and shall be delivered to the Chief Clerk of such judge; and when any such book, paper, or document, shall be returned from the office of the Taxing Master to the judge's chambers, a memorandum of such return shall be made and signed by such Chief Clerk, or by one of his clerks, and shall be delivered to the Taxing Master.

Drafts settled by the counsel of the Court.

*22 Where in pursuance of any direction by the Court or a judge in chambers drafts are settled by any of the Conveyancing Counsel of the Court, the expense of procuring such drafts to be previously or subsequently settled by

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other counsel, on behalf of the same parties on whose behalf such drafts are settled by the Conveyancing Counsel of the Court, shall not be allowed on taxation as between party and party, or as between solicitor and client, unless the Court or a judge shall otherwise direct.

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Cons. O.
40, r. 30.

*23. Upon interlocutory applications where the Court or a judge shall think fit to award costs to any party, the Court or judge may by the order direct payment of a sum in gross in lieu of taxed costs, and direct by and to whom such sum in gross shall be paid.

Interlocu-
tory appli-
cations.

24. The fees payable on proceedings before a judge in Chambers under the Charitable Trusts Act, 1853, s. 28, shall be the same as the fees payable according to the Rules relating to costs in respect of other proceedings commencing by summons, and shall also in all other respects be regulated by these Rules.

Fees under
Charitable
Trusts
Act.

Cons. O. 41, r. 11.

25. Where the judge directs that any matter commenced by summons under the Act in the last preceding Rule mentioned shall be heard in open Court, the same fees shall be payable and the same costs shall be allowed as would have been payable in respect of any other matter so heard.

Summons
under that
Act.
Fees.

Cons. O. 41, r. 12.

26. The fees and allowances to solicitors on proceedings under the Act 22 & 23 Vict. c. 35, s. 30, shall be the same as are payable under these Rules, and by the practice of the Court for business of a similar nature.

Fees under
22 & 23
Vict. c. 35,
s. 30.

Order of Court 20th March, 1860, r. 5.

SPECIAL ALLOWANCES AND GENERAL REGULATIONS.

27. The following special allowances and general regulations shall apply to all proceedings and all taxations in the Supreme Court of Judicature.

Proceed-
ings in
Supreme
Court.

The numbering of the following rules must be noticed. Each is placed in a bracket to avoid confusion.

(1.) As to writs of summons requiring special indorsement, and as to special cases, pleadings, and affidavits in answer to interrogatories, and other special affidavits, and admissions under Order 32, rule 4, the taxing officer may, in lieu of the allowances for instructions and pre-

Preparing
special
matter.

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- Order LXV.** preparing or drawing, and attendances, make such allowance for work, labour, and expenses in or about the preparation of such documents as in his discretion he may think proper.
- Costs, O. 6, r. 1.
- Copy included.** (2.) As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.
- Costs, O. 6, r. 2.
- Instructions.** (3.) As to instructions to sue or defend, *or the preparation of briefs*, if the taxing officer shall on special grounds consider the fee *in either scale* provided inadequate, he may make such further allowance as he shall in his discretion consider reasonable.
- Costs, O. 6, r. 3.
- Preparing affidavits.** (4.) As to affidavits, when there are several deponents to be sworn, or it is necessary for the purpose of an affidavit being sworn to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing officer in his discretion may think fit.
- Costs, O. 6, r. 4.
- Attendances to settle.** (5.) The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent to be sworn, include all attendances on the deponent to settle and read over.
- Costs, O. 6, r. 5.
- Services, same solicitor.** (6.) As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service.
- Costs, O. 6, r. 6.
- Perusal.** (7.) As to perusals the fees are not to apply where the same solicitor is for both parties.
- Costs, O. 6, r. 7.
- Same solicitor for two or more defendants.** (8.) Where the same solicitor is employed for two or more defendants, and separate pleadings are delivered or other proceedings had by or for two or more such defendants separately, the taxing officer shall consider in the taxation of such solicitor's bill of costs, either between party and party or between solicitor and client, whether

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such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

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Cons. O. 40, r. 12. See *Morgan*, p. 630.

(9.) As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed.

Evidence.

Costs, O. 6, r. 8. *Turnbull v. Jonson*, 3 C. P. D. 264.

(10.) As to agency correspondence, in country agency causes, and matters, if it be shown to the satisfaction of the taxing officer that such correspondence has been special and extensive, he is to be at liberty to make such special allowance in respect thereof as in his discretion he may think proper.

Agency
correspon-
dence.

Costs, O. 6, r. 9.

(11.) As to the attendance of solicitors upon the registrars in the Chancery Division for the purpose of settling the terms of and passing judgments or orders, the taxing officer may, in such cases as are provided for by Order 62, rule 15, make such special allowances in respect thereof as he shall consider reasonable.

Attend-
ance upon
registrars.

(12.) As to attendances at the judges' chambers, where, from the length of the attendance, or from the difficulty of the case, the judge or master shall think the highest of the fees an insufficient remuneration for the services performed, or where the preparation of the case or matter to lay it before the judge or master in chambers, or on a summons, shall have required skill and labour for which no fee has been allowed, the judge or master may allow such fee, in lieu of the fee of £1 1s. provided, not exceeding £2 2s., or where the higher scale is applicable £3 3s., or in proceedings to wind up a company £5 5s., as in his discretion he may think fit; and where the preparation of the case or matter to lay it before a judge at chambers on a summons shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the judge to deserve higher remuneration than the ordinary fees, the judge may allow to the solicitor, by a memorandum in writing expressly made for that purpose and signed by the judge, specifying distinctly the grounds of such allowance, such

Attend-
ance at
judge's
chambers.

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fee, not exceeding 10 guineas, as in his discretion he may think fit, instead of the fees of £2 2s., £3 3s., and £5 5s.

Costs, O. 6, r. 10.

Useless attend- ance.

(13.) As to attendances at the judges' chambers, where by reason of the non-attendance of any party (unless it be considered expedient to proceed ex parte), or where by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested.

Costs, O. 6, r. 11. *Simmons v. Stover*, Ch. D. 154.

Words in a folio.

(14.) A folio is to comprise seventy-two words, every figure comprised in a column, or authorised to be used, being counted as one word.

Costs, O. 6, r. 12.

Consulta- tion.

(15.) Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing officer shall in his discretion think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer shall in his discretion think proper to be settled by counsel, are to be allowed; but as to affidavits a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

Costs, O. 6, r. 13.

Counsel at chambers.

(16.) As to counsel attending at judges' chambers, no costs thereof shall in any case be allowed, unless the judge certifies it to be a proper case for counsel to attend.

Costs, O. 6, r. 14. See *Morgan*, p. 632.

Inspection of docu- ments.

(17.) As to inspection of documents under Order 31, rule 15, no allowance is to be made for any notice or inspection, unless it is shown to the satisfaction of the

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taxing officer that there were good and sufficient reasons for giving such notice and making such inspection.

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Costs, O. 6, r. 15. *Brown v. Sewell*, 16 Ch. D. 517.

(18.) As to taking copies of documents in possession of another party, or extracts therefrom, under Rules of Court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may, by writing, require, at the rate of 4*d.* per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof.

Copies of documents in possession of other party.

Costs, O. 6, r. 16. Costs of documents unnecessarily taken would probably come under (20).

(19.) Where any petition in a cause or matter assigned to the Chancery Division is served, and notice is given to the party served that in case of his appearance in Court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be £1 10*s.* The party making such payment shall be allowed the same in his costs, provided such service was proper, but not otherwise; but this order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or judge shall consider the party entitled, notwithstanding such notice or tender, to appear in Court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition, without appearing thereon, he is to be allowed a fee not exceeding *the amount aforesaid.*

Costs to be tendered on service of petition.

Costs, O. 6, r. 17. It used to be £2 2*s.*

(20.) The Court or judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter in Court or at chambers, and whether the same is objected to or not, direct the cost of any *indorsement on a writ of summons*, pleading, *summons*, affidavit, evidence, *notice requiring a statement of claim*, notice to produce, admit, or cross-examine witnesses, account, statement, *procuring discovery by interrogatories or order*, applications for time, bills of costs, service of notice of motion or summons, or other proceeding, or any part thereof,

Unnecessary proceedings.

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which is improper, *vexatious*, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, *vexatious*, or to contain unnecessary matter, or to be of unnecessary length, or caused by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties; and in any case where such question shall not have been raised before and dealt with by the Court or judge it shall be the duty of the taxing officer to look into the same (and, as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so: *and in the Queen's Bench Division the master shall make such order as may be required to effect the object of this regulation.*

Costs, O. 6, r. 18.

Set off.

(21.) In any case in which, under the last preceding regulation, or any other Rule of Court, or by the order or direction of a Court or judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid, and direct payment thereof, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

Costs, O. 6, r. 19. *Barker v. Hemming*, 5 Q. B. D. 609. See (55.)

Note by chief clerk.

(22.) Where in the Chancery Division any question as to any costs is under Regulation 20 dealt with at chambers, the chief clerk is to make a note thereof, and state the same on his allowance of the fees for attendances at chambers, or otherwise as may be convenient for the information of the taxing officer.

Costs, O. 6, r. 20. Cf. O. 62, r. 15.

Unneces- sary ap- pearance.

(23.) Where any party appears upon any application or proceeding in Court or at chambers, in which he is not

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interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs of such appearance unless the Court or judge shall expressly direct such costs to be allowed.

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Costs, O. 6, r. 21. As to counsel attending, see Morgan, p. 125.

(24.) The costs of applications to extend the time for taking any proceedings shall be in the discretion of the taxing officer unless the Court or judge shall have specially directed how the costs are to be paid or borne. The taxing officer shall not allow the costs of more than one extension of time, unless he is satisfied that such extension was necessary, and could not, with due diligence, have been avoided. *The costs of a summons to extend time shall not be allowed in cases to which Rule 8 of Order 64 applies, unless the party taking out such summons has previously applied to the opposite party to consent, and he has not given a consent to a sufficient extension of time, or the taxing officer shall consider there was a good reason for not making such application; and in case the taxing officer shall not allow the costs of such summons, and shall consider that the party applying ought to pay the costs of any other party occasioned thereby, he may direct such payment, or deal with such costs, in the manner provided by Regulation 21.

Of applica-
tions for
time.

Consent.

Costs, O. 6, rr. 22, 22a. Cf. O. 64, r. 8.

(25.) The taxing officers of the Supreme Court, or of any Division thereof, shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as have heretofore been *or are by general orders directed to be* performed by any of the masters, taxing masters, registrars, or other officers of any of the Courts whose jurisdiction is by the principal Act transferred to the High Court of Justice or Court of Appeal, and shall, in respect thereof, have such powers and authorities as previous to the commencement of the principal Act were, *or by general orders are*, vested in any of such officers, including examining witnesses, directing production of books, papers, and documents, making separate certificates or allocators, requiring any party to be represented by a separate solicitor, and to direct and adopt all such other proceedings as could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts

General
powers of
taxing
officers.

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**Order
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of what is due in respect of such costs, and such other accounts connected therewith as may be directed by the Court or a judge.

Rules of the Supreme Court (Costs), r. 23. *Re Atkinson*, 26 Beav. 51.

**Court may
direct tax-
ing officer
to assist.**

*(26.) Where an account consists in part of any bill of costs, the Court or judge may direct the taxing officer to assist in settling such costs, not being the ordinary costs of passing the account of a receiver, and the taxing officer, on receiving such direction, shall proceed to tax such costs, and shall have the same powers, and the same fees shall be payable in respect thereof, as if the same had been referred to the taxing officer by an order; and he shall return the same, with his opinion thereon, to the Court or judge by whose direction the same were taxed.

**Parties to
attend tax-
ation.**

(27.) The taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall in his discretion consider unnecessary in consequence of the interest of such party in such fund or estate being small or remote, or sufficiently protected by other parties interested.

Rules of the Supreme Court (Costs), r. 24.

**Refusal or
neglect to
bring in
costs.**

(28.) When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

Rules of the Supreme Court (Costs), r. 25.

**Party and
party costs.**

(29.) As to costs to be paid or borne by another party, no costs are to be allowed which do not appear to the taxing officer to have been necessary or proper for the attainment of justice or defending the rights of the party or which appear to the taxing officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party.

Rules of the Supreme Court (Costs), r. 26. *Fritz v. Hobson*, 14 Ch. D. 542.

**Work not
specially**

(30.) As to any work and labour properly performed and not herein provided for, and in respect of which fees have

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heretofore been allowed, the same or similar fees are to be allowed for such work and labour as have heretofore been allowed.

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Rules of the Supreme Court (Costs), r. 27.

provided
for.

*(31.) Where the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to a defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which may have been paid by the plaintiff according to the course of the Court at the time of any amendment.

Costs of
amend-
ment.

*(32.) Where upon taxation a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff.

Occasioned
by amend-
ment.

*(33.) Where an *action* or petition is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order directed to be paid, *the taxing officer* may tax such costs without any order referring the same for taxation, unless the Court or a judge upon the application of the party alleging himself to be aggrieved prohibits the taxation of such costs.

Taxation
when
action dis-
missed.

Cons. O. 40, r. 38.

*(34.) Where it is directed that costs shall be taxed in case the parties differ about the same, the party claiming the costs shall bring the bill of costs into the office of the proper taxing officer, and give notice of his having so done to the other party, and at any time within eight days after such notice such other party shall have liberty to inspect the same without fee, if he thinks fit. And at or before the expiration of the eight days, or such further time as the taxing officer shall in his discretion allow, such other party shall either agree to pay the costs or signify his dissent therefrom, and shall thereupon be at liberty to tender a sum of money for the costs; but where he makes no such tender, or where the party claiming the costs refuses to accept the sum so tendered, the taxing officer shall proceed to tax the costs; and where the taxed costs

Direction
to tax if
parties
differ.

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Order LXV.	shall not exceed the sum tendered, the costs of the taxation shall be borne by the party claiming the costs. Cons. O. 40, r. 39.
When costs directed to be paid out of a fund.	*(35.) Where any costs are by any <i>judgment</i> or order directed to be taxed and to be paid out of any money <i>or fund</i> in Court, the taxing officer in his certificate of taxation shall state the total amount of all such costs as taxed without any direction for that purpose in such judgment or order. Cons. O. 40, r. 40.
Allow- ances to convey- ancing counsel, &c.	*(36.) The allowances in respect of fees to the conveyancing counsel of the Court, and to any accountants, merchants, engineers, actuaries, and other scientific persons to whom any question is referred, shall be regulated by the taxing officers, subject to appeal to the Court or judge, whose decision shall be final.
(Old prac- tice re- tained.	(37.) The rules, orders, and practice of any Court whose jurisdiction is transferred to the High Court of Justice or Court of Appeal, relating to costs, and the allowance of the fees of solicitors and attorneys, and the taxation of costs, existing prior to the commencement of the principal Act, shall, in so far as they are not inconsistent with the principal Act and these Rules, remain in force and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the High Court of Justice and Court of Appeal. Rules of Sup. Court (Costs), r. 28. <i>Pringle v. Gloag</i> , 10 Ch. D. 676.
Discretion of taxing master.	(38.) As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances: <i>and where a party is entitled to sign judgment for his costs, the taxing officer, in taxing the costs, may allow a fixed sum for the costs of the judgment.</i> Rules of the Supreme Court (Costs), r. 29. See note to (13.)
Objection to taxa- tion.	(39.) Any party who may be dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him, of the whole or any part of

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any items, may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the items, or parts thereof, objected to, *and the grounds and reasons for such objections*, and may thereupon apply to the taxing officer to review the taxation in respect of the same.

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Rules of the Supreme Court (Costs), r. 30. See note to (13.) *Sparrow v. Hill*, 8 Q. B. D. 479, and 7 Q. B. D. 367.

40. Upon such application the taxing officer shall re-consider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by either party, he shall state either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto.

Review of
taxation.

Rules of the Supreme Court (Costs), r. 31. See p. 283.

41. Any party who may be dissatisfied with the certificate or allocatur of the taxing officer, as to any item or part of an item which may have been objected to as aforesaid, may *within fourteen days from the date of the certificate or allocatur, or such other time as the Court or judge, or taxing officer, at the time he signs his certificate or allocatur, may allow*, apply to a judge at chambers for an order to review the taxation as to the same item or part of an item, and the judge may thereupon make such order as the judge may think just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid.

Order to
review
taxation.

Rules of Sup. Court (Costs), r. 32. *Hargreaves v. Scott*, 4 C. P. D. 21.

42. Such application shall be heard and determined by the judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received upon the hearing thereof, unless the judge shall otherwise direct.

Evidence
before
judge.

Rules of the Supreme Court (Costs), r. 33.

43. When a writ of summons for the commencement of an action shall be issued from a District Registry, and when an action proceeds in a District Registry, all fees and allowances, and rules and directions relating to costs, which would be applicable to such proceeding if the writ of summons were issued at the *Central Office*, and if the

District
Registry.

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Order LXV.	<p>action proceeded in London, shall apply to such writ of summons issued from and other proceedings in the District Registry.</p> <p>Rules of the Sup. Court (Costs), r. 34. <i>The Neera</i>, 5 P. D. 118.</p>
Retaining fee.	<p>*(44.) No retaining fee to counsel shall be allowed on taxation as between party and party.</p>
Confer- ences.	<p>*(45.) Fees for conferences are not to be allowed in any cause or matter in addition to the solicitor's and counsel's fees for drawing and settling, or perusing any pleadings, affidavits, deeds, or other proceedings or abstracts of title, or for advising thereon, unless it shall appear to the taxing officer for some special reason that a conference was necessary or proper.</p> <p>Not even between solicitor and client.</p>
Number of counsel.	<p>*(46.) In any case in which under Rule 12 of this Order the scale of costs in County Courts is applicable, the costs of briefing more than one counsel shall not be allowed, unless the taxing officer shall, for special reasons, be of opinion that briefing more than one counsel was proper.</p>
Costs of two coun- sel.	<p>*(47.) Where the costs of retaining two counsel may properly be allowed, such allowance may be made although both such counsel may have been selected from the outer bar.</p> <p>See Cons. O. 40, r. 20, See preceding Rule.</p>
Re- freshers.	<p>*(48.) As to refresher fees, when any cause or matter is to be tried or heard upon vivâ voce evidence in open Court, if the trial shall extend over more than one day, and shall occupy either on the first day only, or partly on the first and partly on a subsequent day or days, more than five hours, without being concluded, the taxing officer may allow, for every clear day subsequent to that on which the five hours shall have expired, the following fees:—</p> <p>To the leading counsel . . . from 5 to 10 guineas. To the second, if three counsel „ 3 to 7 „ To the third, if three counsel, or the second, if only two „ 3 to 5 „</p> <p>The like allowances may be made where the evidence in chief is not taken vivâ voce, if the trial on hearing shall be substantially prolonged beyond such period of five hours, to be so computed as aforesaid, by the cross-examination of witnesses whose affidavits or depositions have been used.</p> <p>See Hints to Solicitors, p. 154; and also as to when three counsel are allowed, p. 178.</p>
Costs of briefs.	<p>*(49.) Where a cause or matter shall not be brought on for trial or hearing, the costs of and consequent on the</p>

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preparation and delivery of briefs shall not be allowed if the taxing officer shall be of opinion that such costs were prematurely incurred. **Order LXV.**

See Hints to Solicitors, pp. 18, 107.

*(50.) Where a cause or matter which stands for trial is called on to be tried, but cannot be decided by reason of a want of parties or other defect on part of the plaintiff, and is therefore struck out of the paper, and the same cause is again set down, the defendant shall be allowed the taxed costs occasioned by the first setting down, although he does not obtain the costs of the cause or matter. **Causes struck out of paper.**

*(51.) The following fees are to be allowed to counsels' clerks :— **Fees to counsels' clerks.**

	£	s.	d.
Upon a fee under 5 guineas	0	2	6
5 guineas and under 10 guineas	0	5	0
10 guineas and under 20 guineas	0	10	0
20 guineas and under 30 guineas	0	15	0
30 guineas and under 50 guineas	1	0	0
50 guineas and upwards per cent.	2	10	0
On consultations, senior's clerk	0	5	0
On consultations, junior's clerk	0	2	6
On conferences	0	5	0
On retainers (where allowed) :			
General retainer	0	10	6
Common retainer	0	2	6

*(52.) No fee to counsel shall be allowed on taxation unless vouched by his signature. **Counsel's signature to fees.**

This is not so now in the P. D.

*(53.) In cases in which an original affidavit can be used, and to which Order 38, Rule 15, applies, it shall not be necessary to take an office copy. **Affidavits**

*(54.) It shall not be necessary to take an office copy of an affidavit of discovery of documents, and the copy delivered by the party filing it may be used as against such party. **Office of affidavit of discovery of documents.**

This is a useful economy.

*(55.) Where, in proceedings before the taxing officer, any party is guilty of neglect or delay, or puts any other party to any unnecessary or improper expense relative to such proceedings, the taxing officer may direct such party or his solicitor to pay such costs as he may think proper, or deal with them under Regulation 21. **Costs of neglect or delay.**

*(56.) Where in any cause or matter any bill of costs is directed to be taxed for the purpose of being paid or of a fund. **Costs out of a fund.**

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- Order LXV.** raised out of any fund or property, the taxing officer may, if he shall consider there is a reasonable ground for so doing, require the solicitor to deliver or send to his clients, or any of them, free of charge, a copy of such bill, or any part thereof, previously to such officer completing the taxation thereof, accompanied by any statement such officer may direct, and by a letter informing such client that the bill of costs has been referred to the taxing officer, giving his name and address for taxation, and will be proceeded with at the time the officer shall have appointed for this purpose, and such officer may suspend the taxation for such time as he may consider reasonable.
- Copy of bill to be sent to client.**
- Taxing officer may extend time of proceedings.** *(57.) The taxing officer shall have power to limit or extend the time for any proceeding before him, and where, by any general order, or any order of the Court or a judge, a time is appointed for any proceeding before or by a taxing officer, unless the Court or judge shall otherwise direct, such officer shall have power from time to time to extend the time appointed upon such terms (if any) as the justice of the case may require, and although the application for the same is not made until after the expiration of the time appointed, it shall not be necessary to make a certificate or order for this purpose, unless required for any special purpose.
- Name and address of solicitor to be endorsed on bill.** *(58) Every bill of costs which shall be left for taxation shall be endorsed with the name and address of the solicitor by whom it is so left, and also the name and address of the solicitor, if any, for whom he is agent, including any solicitor who is entitled or intended to participate in the costs to be so taxed.
- Cf. O. 66, r. 7 l.

ORDER LXVI.

- Order LXVI.** — — — NOTICES, PRINTING, PAPER, COPIES, OFFICE COPIES, MINUTES, &c.
- Notice, how given.** 1. All notices required by these Rules shall be in writing, unless expressly authorised by the Court or a judge to be given orally.
- J. A., O. 56, r. 1. Printing would do. See note to next Rule.
- Papers left at chambers.** *2. All accounts, copies, and papers left at chambers, shall be written upon foolscap paper, bookwise, unless the nature of the document renders it impracticable.
- Regulation 17, August 8, 1857. Morgan, p. 170.
- Printing.** 3. Proceedings required to be printed shall be printed

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on cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream, or thereabouts, in pica type leaded, with an inner margin about three quarters of an inch wide, and an outer margin about two inches and a half wide.

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LXVI.**

J. A., O. 56, r. 2. *Webb v. Bornford*, 46 L. J. Ch. 288.

4. Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript.

J. A., O. 56, r. 3. See R. 7.

5. Where any written deposition of a witness has been filed, such deposition shall be printed, unless otherwise ordered.

Rules of the Supreme Court (Costs), O. 1.

6. The Rules of Court as to printing depositions and affidavits to be used on a trial shall not apply to depositions and affidavits which have previously been used upon any proceeding without having been printed.

When
Rules as to
printing do
not apply.

Rules of the Supreme Court (Costs), O. 2. Cf. O. 38, r. 21.

7. Where, pursuant to these Rules, any pleading, notice, special case, petition of right, deposition, or affidavit is to be printed, and where any printed or other office copy of any such document is to be taken, the following regulations shall be observed :

Printing
Rules.

(a.) The party on whose behalf the deposition or affidavit is taken and filed is to print the same in the manner provided by Rule 3 of this Order :

Party to
print.

R. 1.

(b.) To enable the party printing, to print any deposition or affidavit, the officer with whom it is filed shall on demand deliver to such party a copy written on draft paper on one side only :

Copy to be
furnished.

R. 2.

(c.) The party printing shall, on demand in writing, furnish to any other party any number of printed copies, not exceeding ten, upon payment therefor at the rate of 1*d.* per folio for one copy, and $\frac{1}{2}$ *d.* per folio for every other copy :

Cost.

R. 3.

(d.) *As between a solicitor delivering any printed copies and his client*, credit shall be given by the solicitor for the whole amount payable by any other party for such printed copies :

Credit.

R. 4.

(e.) The party entitled to be furnished with a print shall not be allowed any charge in respect of a copy.

Written
copy.

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written copy, unless the Court or a judge shall otherwise direct :

R. 5.

Office
copy.

(f.) *Except as provided by Order 55, Rule 48, the party by or on whose behalf any deposition, affidavit, or certificate is filed shall leave a copy with the officer with whom the same is filed, who shall examine it with the original and mark it as an office copy ; such copy shall be a copy printed as above provided where such deposition or affidavit is to be printed :*

R. 6.

Produc-
tion.

(g.) The party or solicitor who has taken any printed or written office copy of any deposition or affidavit is to produce the same upon every proceeding to which the same relates :

R. 7.

Furnish-
ing copies.

(h.) Where any party is entitled to a copy of any deposition, affidavit, proceeding, or document filed or prepared by or on behalf of another party, which is not required to be printed, such copy shall be furnished by the party by or on whose behalf the same has been filed or prepared :

R. 8.

How ob-
tained.

See (n.)

(i.) The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of twenty-four hours after the receipt of such request and undertaking, or within such other time as the Court or a judge may in any case direct, and is to be furnished accordingly upon demand and payment of the proper charges :

R. 9.

Ne exeat.

(j.) In the case of an ex parte application for an injunction or writ of ne exeat regno, the party making such application is to furnish copies of the affidavits upon which it is granted upon payment of the proper charges immediately upon the receipt of such written request and undertaking as aforesaid, or within such time as may be specified in such request, or may have been directed by the Court or a judge :

R. 10.

RULES OF THE SUPREME COURT.

(k.) It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be printed on every printed copy of an affidavit or set of affidavits, and copied on every office copy and copy furnished to a party : **Order LXVI.**
Affidavit to state on whose behalf filed.
 R. 11.

(l.) The name and address of the party or solicitor by whom any copy is furnished is to be indorsed thereon in like manner as upon proceedings in Court, and such party or solicitor is to be answerable for the same being a true copy of the original, or of an office copy of the original, of which it purports to be a copy, as the case may be : **Name and address of party furnishing affidavit.**
 R. 12.

(m.) The folios of all printed and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively on the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed copies : **Numbering.**
 R. 13.

(n.) In case any party or solicitor who shall be required to furnish any such written copy as aforesaid shall either refuse or, for twenty-four hours from the time when the application for such copy has been made, neglect to furnish the same, the person by whom such application shall be made shall be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs shall be payable to the solicitor so making default in respect of the copy so applied for : **Refusal to furnish. See (i.)**
 R. 14.

(o.) Where, by any order of the Court (whether of appeal or otherwise) or a judge, any pleading, evidence, or other document is ordered to be printed, the Court or judge may order the expense of printing to be borne and allowed, and printed copies to be furnished by and to such parties and upon such terms as shall be thought fit.

R. 15. Rules of the Supreme Court (Costs), O. 5.

*8. On filing any instrument or document in Admiralty actions, the solicitor shall state, in writing, on a printed form called a minute, to be obtained in the Admiralty **Filing documents in Admi-**

RULES OF THE SUPREME COURT.

Order LXVI.

Admiralty ac-
tions.
The "Mi-
nute
Book."

Registry, the nature of the instrument or document filed, and the date of the filing thereof.

*9. In Admiralty actions a record of all such minutes as in the last preceding Rule mentioned, and of all actions commenced and appearances entered, and of all orders of the Court, shall be entered in a book to be kept in the Admiralty Registry, called the "Minute Book."

Order LXVII.

*ORDER LXVII.

I. SERVICE OF ORDERS, &c.

Sufficient
to exhibit
office copy
at time of
service
of order.

1. Except in the case of an order for attachment, it shall not be necessary to the regular service of an order that the original order be shown if an office copy of it be exhibited.

See p. 150, and p. 239.

Where
personal
service not
requisite.

2. All writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite shall be sufficiently served if left within the prescribed hours, at the address for service of the person to be served as defined by Orders 4 and 12, with any person resident at or belonging to such place.

See O. 4, and O. 12, rr. 10—12, inclusive. See p. 150. See O. 64, r. 11.

Notices
may be
sent by
post.

3. Notices sent from any office of the Supreme Court may be sent by post; and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof, and the posting thereof shall be a sufficient service.

Cf. O. 13, r. 11.

Where no
appear-
ance en-
tered.
Default in
appear-
ance.

4. Where no appearance has been entered for a party, or where a party or his solicitor, as the case may be, has omitted to give an address for service as required by Orders 4 and 12, all writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite may be served by filing them with the proper officer.

Comp. J. A., O. 19, r. 6. See note to Rule 2, and see p. 103. As to penalty, see O. 12, r. 18. See too O. 13, r. 12.

Personal
service.

5. Where personal service of any writ, notice, pleading, order, summons, warrant, or other document, proceeding,

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or written communication is required by these Rules or otherwise, the service shall be effected as nearly as may be in the manner prescribed for the personal service of a writ of summons.

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LXVII.**

How personal service effected.

See O. 9, rr. 1—15 inclusive, and O. 10. See p. 143 and p. 146.

6. Where personal service of any writ, notice, pleading, summons, order, warrant, or other document, proceeding, or written communication is required by these Rules or otherwise, and it is made to appear to the Court or a judge that prompt personal service cannot be effected, the Court or judge may make such order for substituted or other service, or for the substitution of notice for service by letter, public advertisement, or otherwise, as may be just.

Personal service. Substituted service.

Comp. J. A., O. 9, r. 2. See as to the affidavit in support, O. 10.

7. Where a party after having sued or appeared in person has given notice in writing to the opposite party or his solicitor, through a solicitor, that such solicitor is authorised to act in the cause or matter on his behalf, all writs, notices, pleadings, summonses, orders, warrants, and other documents, proceedings, and written communications which ought to be delivered to or served upon the party on whose behalf the notice is given shall thereafter be delivered to or served upon such solicitor.

Appearing in person and afterwards by solicitor. Service on solicitor of party.

Comp. J. A., O. 9, r. 1. See O. 4, rr. 1 and 3, and O. 12, r. 8.

8. Where a person who is not a party appears in any proceeding either before the Court or in chambers, service upon the solicitor in London by whom such person appears, whether such solicitor act as principal or agent, shall be deemed good service except in matters *requiring personal service*.

Service upon solicitor. On person not a party.

Cons. Ord. 3, r. 7. As to personal service, see p. 143.

1. Affidavits of service shall state when, where, and how and by whom, such service was effected.

Affidavits of.

Cons. Ord. 10, r. 8. The solicitor who applies to enter judgment in default of appearance must produce (1) the original writ, (2) the original affidavit of service, and (3) the certificate of no appearance. See p. 148.

II. ADMIRALTY ACTIONS.

10. Every instrument, under the seal of the Court, and prepared in the Admiralty Registry, shall be issued on a notice filed by the solicitor applying for the same, and shall bear date on the day on which it is issued.

Instruments prepared in Admiralty Registry.

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Time for service.

Service on Sundays, &c.

**Service by
the mar-
shal.**

**Must be
verified by
certificate.**

11. Every instrument shall be served within twelve months from the day on which it bears date, otherwise the service thereof shall not be valid.

12. No instrument except a warrant shall be served on a Sunday, Good Friday, or Christmas Day.

See O. 63, r. 6.

13. Every warrant or other instrument required to be served by the marshal shall be left by the solicitor taking out the same with a notice in the Admiralty Registry.

14. The service of any instrument by the marshal shall be verified by his certificate. The service of any instrument by a solicitor, his clerk or agent, shall be verified by an affidavit.

Order LXVIII.

ORDER LXVIII.

APPLICATION OF RULES IN CROWN REVENUE AND MATRIMONIAL CASES.

**Proceed-
ings ex-
cepted
from rules.**

1. Subject to the provisions of this Order, nothing in these Rules, *save as expressly provided*, shall affect the procedure or practice in any of the following causes or matters :—

(a.) Criminal proceedings ;

Reg. v. Foote 10 Q. B. D. 378.

. (b.) Proceedings on the Crown side of the Queen's Bench Division;

(c.) Proceedings on the Revenue side of the *Queen's Bench* Division ;

(d.) Proceedings for divorce or other matrimonial causes.

J. A., O. 62, r. 1, and J. A. 1875, s. 21.

Application of orders.

2. The following *orders* shall, as far as they are applicable, apply to all civil proceedings on the Crown side of the Queen's Bench Division, *including mandamus and prohibition*, and also to quo warranto, and to all proceedings on the Revenue side of the said Division ; namely,—

(a.) Order 28 (Amendment) ;

(b.) *Order 34 (Special case)* ;

(c.) *Order 38 (Affidavits)* ;

(d.) *Order 52 (Motions);*

(e.) Order 58 (Appeals)

(f.) Order 64 (Time);

RULES OF THE SUPREME COURT.

- (g.) Order 65 (Costs) ;
- (h.) Order 66 (Notices, &c.) ;
- (i.) Order 70 (*Non-compliance*) ;

**Order
LXVIII.**

Provided, that Order 58 shall not apply to quo warranto.

J. A., O. 62, r. 2.

*3. Where pleadings in prohibition are ordered, the pleadings and subsequent proceedings, including judgment and assessment of damages, if any, shall be, as nearly as may be, the same as in an ordinary action for damages.

Pleadings
in prohibi-
tion
ordered.

*4. Affidavits used in applications on the Crown side of the Queen's Bench Division shall be intituled in the Queen's Bench Division.

Title of
affidavits.

Cf. O. 38, r. 2.

ORDER LXIX.

**Order
LXIX.**

ARREST OF DEFENDANT UNDER S. 6 OF THE DEBTORS Act, 1869.

*1. An order to arrest under the 6th section of the Debtors Act, 1869 (which shall be in the Form No. 31 in Appendix K., with such variations as circumstances may require), shall be made upon affidavit and ex parte; but the defendant may at any time after arrest apply to the Court or a judge to rescind or vary the order or to be discharged from custody, or for such other relief as may be just.

Order to be
made upon
affidavit
and ex
parte.

See 32 & 33 Vict. c. 62, s. 6, and O. Jan. 7, 1870, rr. 10 and 12.

2. An order to arrest shall before delivery to the sheriff be indorsed with the plaintiff's address for service as required by Order 4, Rules 1 and 2. Concurrent orders may be issued for arrest in different counties. The sheriff or other officer executing the order shall be entitled to the same fees as heretofore.

Indorse-
ment of
order.

See O. 4, rr. 1 and 2. Cf. O. 42, r. 15.

*3. The security to be given by the defendant may be a deposit in Court of the amount mentioned in the order, or a bond to the plaintiff by the defendant and two sufficient sureties (or with the leave of the Court or a judge either one surety or more than two), or, with the plaintiff's consent, any other form of security. The plaintiff may, within four days after receiving particulars of the names and

Security.

RULES OF THE SUPREME COURT.

- Order LXIX.** addresses of the proposed sureties, give notice that he objects thereto, stating in the notice the particulars of his objections. In such case the sufficiency of the security shall be determined by a Master who shall have power to award costs to either party. It shall be the duty of the plaintiff to obtain an appointment for that purpose, and unless he do so within four days after giving notice of objection, the security shall be deemed sufficient.
- Sufficiency of security determined by Master.** See R. S. C., 1875, O. 14, r. 6.
- Subject to control of Court.** 4. The money deposited, and the security, and all proceedings thereon, shall be subject to the order and control of the Court or a judge.
- Costs.** R. S. C., 1875, O. 55, r. 2. Cf. O. 65, r. 6.
- Certificate of receipt.** *5. Unless otherwise ordered, the costs of and incidental to an order of arrest, shall be costs in the cause.
- Discharge.** *6. Upon payment into Court of the amount mentioned in the order, a receipt shall be given ; and upon receiving the bond or other security, a certificate to that effect shall be given, signed or attested by the plaintiff's solicitor if he have one, or by the plaintiff, if he sue in person. The delivery of such receipt, or a certificate to the sheriff or other officer executing the order, shall entitle the defendant to be discharged out of custody.
- Indorsement of date of arrest.** Cf. O. Jan. 7, 1870, r. 17. As to certificate of payment, see O. 65, r. 7.
7. The sheriff or other officer named in an order to arrest shall, within two days after the arrest, indorse on the order the true date of such arrest.
- O. Jan. 7, 1870, r. 16.

Order LXX.

ORDER LXX.

EFFECT OF NON-COMPLIANCE.

- With any Rules.** 1. Non-compliance with any of these Rules, *or with any rule of practice for the time being in force*, shall not render any proceedings void unless the Court or a judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or judge shall think fit.

J. A., O. 59, r. 1.

RULES OF THE SUPREME COURT.

- *2. No application to set aside any proceeding for irregularity shall be allowed unless made within reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity.

As to waiving the irregularity, see *Pilcher v. Hinds*, 11 Ch. D. 905, C. A.
- Order
LXX

Time for
applica-
tion to set
aside.
- *3. Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the summons or notice of motion.

Objections
to be
stated in
summons.
- *4. When a summons is taken out to set aside any process or proceeding for irregularity with costs, and the summons is dismissed generally without any special direction as to costs, it is to be understood as dismissed with costs.

Costs.

ORDER LXXI.

INTERPRETATION OF TERMS.

1. The provisions of the 100th section of the Principal Act shall apply to these Rules.

In the construction of these Rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the meanings follow :—
- Order
LXXI

Interpre-
tation.
- “*Originating Summons*” means a summons by which proceedings are commenced without writ :

e.g. Under Ch. Pro. Act, 1852, s. 45, for administration.

Origina-
ting sum-
mons.
- “Person” includes a body corporate or politic ;

Person.
- “Probate actions” include actions and other matters relating to the grant or recall of probate or of letters of administration other than common form business :

Probate
actions.
- “Proper officer” means an officer to be ascertained as follows :—

Proper
officer.
- (a.) Where any duty to be discharged under the Acts or these Rules is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same :

RULES OF THE SUPREME COURT.

Order LXXI

- (b.) Where any new duty is under the Acts or these Rules to be discharged, the proper officer to discharge the same shall be such officer as may from time to time be directed to discharge the same, in the case of an officer of the Supreme Court, or the High Court of Justice, or the Court of Appeal, not attached to any Division, by the Lord Chancellor, and in the case of an officer attached to any Division, by the President of the Division, and in the case of an officer attached to any judge, by such judge:

J. A., O. 63, r. 1b.

“Master” means a Master of the Supreme Court of Judicature:

“Receiver” includes consignee or manager appointed by or under an order of the Court:

“Taxing Officer” means Taxing Master in the Chancery Division, and the Master or person whose duty it is to tax the costs to be taxed in the other Divisions respectively:

“The Principal Act” means the Supreme Court of Judicature Act, 1873:

“The Acts” means the Supreme Court of Judicature Acts, 1873 to 1879, the Appellate Jurisdiction Act, 1856, and the Supreme Court of Judicature Act, 1881:

“Central Office” means the Central Office of the Supreme Court of Judicature.

Singular
to include
plural.

*2. In these Rules, unless repugnant to the context, the singular number shall include the plural, and the plural number shall include the singular.

Order LXXII

***ORDER LXXII.**

GENERAL RULES.

Annulled
orders.

1. No Order or Rule annulled by any former Order shall be revived by any of these Rules, unless expressly so declared.

Present
practice.

2. Where no other provision is made by the Acts or

RULES OF THE SUPREME COURT.

these Rules, the present procedure and practice remain in force. **Order LXXII.**

3. During the period of any vacancy in the office of Lord Chancellor, and when the Great Seal is not in Commission, these Rules shall operate as if wherever the words "Lord Chancellor" are used, the words "Lord Chief Justice of England" were used; and during the period of any vacancy in the office of Lord Chief Justice of England, as if wherever the words "Lord Chief Justice of England" are used the words "Lord Chancellor" were used.

“Lord Chancellor” and “Lord Chief Justice.”

GENERAL PRACTICE UNDER THE NEW RULES.

ALTHOUGH pleadings have not been abolished, even in simple cases, the importance of the endorsement on the writ has increased, especially in the case of specially endorsed writs. It would appear probable that the form of endorsement that will be in most general use will either be the special endorsement, so as to get the advantages of Order 14, or that in Order 3, r. 7, when the plaintiff has not sufficient materials at hand for the former.

It does not seem, when the notice to admit specified facts has come into use, supposing it can be given immediately after the issue of the writ, that it will be so easy to misuse Order 14 as it has been heretofore. The *Law Journal* of March 18th, 1882, showed that applications under it had become ordinary steps in an action; the object being to force the hand of the defendant, who on making his affidavit got leave to defend. Searching interrogatories, such as will not now be allowed in most actions even by leave, were exhibited, and then at the trial a great point was made of any discrepancies in the defendant's version of his case, as narrated first in his affidavit, secondly, in his answers to interrogatories, and thirdly, in the witness box at the hearing. The *Times*, to which reference is made in the article quoted, has pointed out that it is not philosophical at all to have a trial for the sake of seeing whether there ought to be a trial or not. It goes on to say that there are many cases which could be decided

Special
endorse-
ment.

Effect of.
Notice to
admit
specific
facts.

Old pro-
cedure
under
O. 14.

Fault of.

GENERAL PRACTICE UNDER

summarily without pleadings on summons, but that both sides should be heard, and also their witnesses, before the decision is given.

The way to prevent improper use of.

The suggestion of the *Times* in fact is, that the master should set down such cases as Order 14 appears to apply to, in a separate list, to be taken by a judge without preliminary proceedings, and it says that in this way its advantages would be retained, and its great evils avoided. Probably this suggestion is not one which we shall see actually adopted under the new system. But if the plaintiff attempts to make any unfair use of Order 14, the defendant should issue the summons for directions, and show the master that it is right that the action should be tried without any preliminary proceedings and he should get an order for the mode of trial; or at all events the like order made upon any summons his opponent may have taken out. Then, at the hearing, the evidence of both parties would be put in, and the whole case finally decided.

Ordinary practice.

But if the master refuses either to allow the plaintiff to sign judgment, or to order this summary mode of trial, say because the defendant says he intends to put in a special defence, then the case would come under the ordinary practice, which will now be considered.

In a case which cannot be disposed of by signing judgment, or trial as suggested under Order 14, and this will generally be either from the plaintiff not having his writ perfect, or not having particulars of his claim ready, or from the defendant having put in what amounts to a special defence; an application for particulars of defence may sometimes be usefully made when the defence has been put in, and in almost all cases one for leave to get discovery or exhibit interrogatories.

What defendant may do.

When the weakness apparently lies on the side of the plaintiff, through not having full particulars of his claim ready, the defendant may strike while the iron is hot, and ask for and obtain particulars of the claim, and possibly

THE NEW RULES.

leave to interrogate may be given in such a case before defence; as it may well be that he has no special defence to put in. If from the particulars of claim when delivered, or the answers to interrogatories by the plaintiff, it appears to the defendant that some defence must be put in by him, and he has no special defence of which he can avail himself, he might put in a traverse of the claim as a statement of defence, and try to get the issues settled in chambers; for *Powell v. Williams*, 27 W. R. 796, seems to have decided that, in a case suitable for trial by a jury, the issues, if the parties cannot agree, should be settled at chambers. One advantage of putting in a defence at once might be, that the plaintiff, supposing he now knew for the first time what his adversary had to say to his claim, might make overtures as to a settlement which the defendant would be willing to accept. Again, in many cases, especially where the defendant has a bad defence, it may be politic for him to put in as general a defence as possible, upon the principle that the plaintiff will then take omne ignotum pro mirifico. General defence.

Of course the consideration which will guide the master is, in what way the action will be quickest settled and the least public time taken up in such settlement, and if it seems to him that a number of independent issues would really have to be considered at the trial, he may allow interrogatories to be exhibited, on the principle that it is better to delay the trial of this action considerably, than that of several other actions inconsiderably, which this one, if tried out in an unsifted condition, would stop the way of. However this may be, we may have here a curious position—the plaintiff stating a quantity of facts and no defence other than practically a general denial put in, so as just to steer clear of O. 19, rr. 13 and 19, and O. 21, r. 1. If interrogatories are to be limited, the defendant can hardly be interrogated as to what his defence really is upon each of these statements, and it is not easy to dive into the future so as to elicit the solution of this difficulty;

GENERAL PRACTICE UNDER

Counter-
claim.

if the trial in such a case is not to be by motion for judgment. Moreover, supposing a counterclaim is set up, the matter is still further complicated. Possibly application under these circumstances to settle the issues would be judicious. This, by the way, the master cannot now do, except by consent, as his powers have not yet been extended to this extent. But how issues are to be settled when the defendant obstinately says what amounts to nothing, it is not easy to see, now that demurrers are done away with, and motions for judgment do not seem particularly favoured.

Settlement
of issues.

Evidence
by
affidavit.

This application too, which would probably be the summons for directions, might include one to take some of the evidence by affidavit. If this is the cheaper course, and the defendant opposes it, he may have to pay the extra costs caused by such refusal, but he will be entitled to have the evidence taken *viva voce*: *Patterson v. Wooler*, 2 Ch. D. 586. However, enough has been said about this.

When
discovery
allowed.

Supposing a special defence, which of course is not limited to fraud the Statute of Limitations and Payment, is set up, then interrogatories and discovery will doubtless be allowed with reference to it; and the real issue will be quickly settled between the parties, unless the plaintiff puts in, as he can do of right, a reply containing special matter. In this case we have, in effect, all the advantages of the old system of claim, defence, and reply, under the simplified form of writ, what only really amounts to a notice of special defence, and a notice of special matter by way of reply, without their disadvantages in the shape of pleader's facts and fictions. Thus we shall have the most concise allegations of facts possible—the gems themselves without the settings. Issue will be *ipso facto* joined, by the putting in of the notice of reply or the lapse of the time for doing so. Therefore this set of circumstances need not be considered at greater length, though it is difficult to see why any reply should be

Modern
pleadings.

THE NEW RULES.

necessary, at all events unless a counterclaim is put in; nor, indeed, need the question of third parties, which has been regulated by the new Rules in a simpler way than under the old régime, and now appears to present but few difficulties.

This note is, of course, but a few observations upon what appears to lie upon the surface of the new system. What will really take place time alone can show with any accuracy, and it would hardly be profitable to make it of any greater length, as several important steps will now be touched upon in detail.

This new Institution is created by Order 30, with the apparent object of collecting into one programme the many applications a party has ordinarily to make in an action in the Queen's Bench Division, to which alone it applies. *Summons for directions.*

It may be taken out for all or any of the following purposes:—To obtain an order for particulars as to any thing mentioned in a pleading, statement of special case, discovery or interrogatories, commission or examination of witnesses, mode or place of trial, reference to arbitration or any other proceeding in the action previous to trial. *What it may contain*

It is presumed that the latter clause "any other proceeding in an action previous to trial" must be qualified so as to mean of a similar character to the instances given before it, if by chance they should arise, rather than as having been intended to include many important applications not named.

Moreover the application must not be one which could not before have been made to a master, as for transfer, the settlement of issues except by consent, prohibition or injunction, or indeed for leave to serve a writ or notice of a writ out of the jurisdiction. (J. A., O. 54, r. 2a.) The provision as to costs with reference to it, viz., that an application for anything which might have been included in it must be made at the cost of the party making it, seems to show that its object is to cut down the expenses *What it may not.*

SUMMONS

of the interlocutory steps in an action ; and the inference is to be drawn that nothing but ordinary applications such as used to be made by summons should be included in it.

How other applications should be made.

“Proceedings” of sufficient importance to be made by motion, as for the appointment of a receiver, are different, and so are applications the necessity for which could not have been expected to arise at the time the summons was taken out, or which will arise only on the non-performance by the other side of some interlocutory order made during the currency of the action. *Wilson v. Church*, 9 Ch. D. 559, shows, however, that an ordinary application should be by summons and not by motion, and that the additional costs caused by such a form of application when not necessary will not be allowed. What is it apparently intended that the summons for directions should contain is, as its name implies, all the probable and reasonable requirements of the side taking it out as to the control of the action in question. In the Lord Chancellor’s Procedure Committee’s Report it is stated that in consequence of it, when the parties appear before the master who will have special facilities for knowing the details of each action which comes before him, he will have power to put a stop to vexatious and idle litigation at once ; and when there does appear to be a real controversy between the parties, to (1) give directions as to all the ordinary steps in an action, and (2) to control the requirements of the litigants as he considers reasonable.

The powers of the master.

The class of case he will have before him.

It will hardly be profitable to discuss the kind of vexatious and idle litigation that he will put a stop to at once, or the summary methods he may adopt for so doing, but we will go on to consider the larger class of cases as to which he will give his directions. The questions asked will have reference to the ordinary steps in an action not provided for by the Rules. For example, it would not do in the summons for directions to apply for leave to put in a statement of claim where the writ has been specially endorsed. In fact, the directions to be asked are as to fixed and

FOR DIRECTIONS.

well-known steps, as for example, for particulars of items mentioned in any pleading under O. 19, rr. 6—8, or as to the mode of trial; as trial by jury, which either party can generally have of right, but for which must get an order (O. 36, rr. 2, 67). A case like *Wedderburn v. Pickering*, 13 Ch. D. 769, shows, however, what litigation a point like this may give rise to. Cf. *Roskell v. Whitworth*, L. R. 5 Chy. 459. And there will no doubt be much opposition offered upon points such as venue where each party has strong predilections for a particular place and yet where arguments of almost equal weight can be advanced on either side; although the chief battle will probably take place upon the question whether or not the action is one in which interrogatories and discovery generally should be ordered or not.

The proviso that upon this application any offer made by the other party to deliver particulars, make admissions, or produce documents must be taken into account further complicates matters, and makes the question of the amount of discovery to be allowed a question of frequent occurrence as well as of great nicety. Questions like venue and mode of trial, reference to arbitration, and examination of witnesses are subject to more fixed rules, and the discretion of the master upon such points is not likely to be disturbed. However, as the costs of it will be costs in the cause, counsel will probably be engaged and appeals frequent with reference to the other questions to be decided in it. In fact there will be so much in it in the hope of saving expense in the future that cannot well be put in at any stage at which it may be profitably issued, that the other side will be pretty sure to gain some advantage by opposing its details. And it will be from the arguments on either side upon the many points with which it will deal, that the Master will be able to form an opinion of the true merits of each case, and will get that knowledge and control over the details of it which will be absolutely necessary for him to direct

Difficult points.

How master will learn the details of each action.

SUMMONS

Advantages.

its course judiciously. The real advantage of it in fact is not so much the saving of expense, for the cost of adjournments will make up for the comparative fewness in number of summonses, as the insight the hearing of it gives the master into the real character of the action in which it is made, and the method in which the action is being fought out.

Other summonses.

If anything is omitted by the party taking out the summons, or if at any future stage any new direction should be required, it can be obtained either alone or together with others by summons, though this will probably have to be paid for by the applicant, as it might have been included in his summons for directions. This will be an argument in frequent use for both sides upon the question of costs, and it will be interesting to see what the Courts hold may and what may not reasonably be (supposed to be able to be) included therein. It is feared, however, unless great restrictions are placed by the masters as to its use, that the summons for directions may, instead of being a blessing, prove to be the reverse—and instead of saving, increase costs. I mean that the summons may, like the similar summons now in use in the Chancery Division, be used as a means of stirring up the action, or the opposite party, from time to time; and so become a fruitful source of costs, by being adjourned as often as the conscience of the parties or the patience of the master will allow. Some adjournments of it may be necessary, as, for instance, where discovery is ordered. Then, supposing the party ordered to file an affidavit of documents files an incomplete one, an application for a further affidavit will be made under the old summons for directions, or in the case of an application for further and better particulars, under O. 19, r. 7.

Adjournments.

Time.

As to the exact stage in the action at which it will be most advantageous to take out this summons, much will depend upon the nature of the action; but it cannot be at a very early stage, as matters will not have developed

FOR DIRECTIONS.

themselves then sufficiently for the legal adviser of the party applying for it to have made up his mind as to the amount of discovery or the particulars he might require, or the witnesses it might be necessary, as through illness, eventually to examine by commission. Perhaps, too, in a proper case, an application to take some of the evidence by affidavit might be included in the summons for directions: *Patterson v. Wooler*, quoted before ; or by the defendant to remove the action into the County Court under 19 & 20 Vict. c. 108. As either party can get any order made upon his opponent's summons, it will often be better to attempt to get what is wanted upon the summons of the other side, as, for example, for the plaintiff to amend his writ upon the defendant's summons, rather than to be premature in applying for the summons for directions himself. There will be no more "No Order," but the summons of the other party will be the peg in respect of which many attempts will be successfully made to hang the order desired by the respondents upon.

The alteration that has been made by O. 54 in proceedings at chambers on the common law side has been considerable ; inasmuch as that not only in the summons for directions can any order be made upon the application of either party or mero motu by the master presiding, but in any summons whatever any number of applications can be included, and any order can be made, as in the summons for directions. Where an order is not made ex parte, if one of the parties is absent, the costs of the day may be ordered to be paid by the absent party, or even by his solicitor personally. Cf. *Lydall v. Martinson*, 5 Ch. D. 780. For an exhaustive, although rather a pessimist view of this summons, the reader is referred to the *Solicitors' Journal*, August 4, 1883.

O. 32, r. 4, allows either party to give notice in writing, nine days before the day for which he has given notice of trial, to any other party to admit any specific facts for the purposes of the trial only. And unless they are ad-

NOTICE TO ADMIT

- Time for.** mitted within six days or any extended time that may be allowed, the costs of proving such facts shall be paid by the party neglecting to make them, whatever the result of the trial is, unless otherwise directed.
- Extent.** The admissions are to be for the particular cause, matter, or issue only, and are not to be used on any other occasion or in favour of any person other than the one who gave the notice ; and by leave any admission may be withdrawn or amended on such terms as may be just.
- Model.** Form No. 12 in Appendix B gives the typical notice which expressly saves all just exceptions to the admissibility of the facts as evidence in the cause ; and the facts the admission of which is therein required are that John Smith died intestate on a certain date, and that James was his only lawful son, and that Julius died on a certain date unmarried. This rule is in truth only the carrying into effect of one of the recommendations contained in the First Report of the Judicature Commission, at p. 14, and being but a means of saving the great
- What it is intended to remedy.** expense now so commonly entailed by the proof of facts about which there can be no bona fide dispute if strictly confined as in the rule and form suggested must be a boon to those honestly desiring a disputed issue to be settled.
- Abuse.** It might, however, be abused by asking for admission of facts really in dispute, which, if obtained through want of care or ill-advised fear of costs, might entitle the party giving the notice to move for judgment upon the admissions so made. For Rule 6 entitles a party to move for judgment where admissions of fact have been made either on the pleadings or otherwise ; and Rule 4 allows the notice to be given at any time not later than the period above named. The Courts, however, are quite strong enough to take care that this is not abused ; and Rule 4 itself furnishes the machinery by giving them power to give leave that any admission may be withdrawn. This, however, will necessitate a summons, as it cannot be foreseen in the summons for directions. The rough and ready

SPECIFIC FACTS.

method of getting in formal evidence which this rule ^{Advantages.} affords not only affects a great saving of expense, but also renders obsolete for practical purposes many of the old rules of evidence, inattention to which sometimes caused the wrong party to win on technical grounds. Another advantage of a proper use of this rule is that only the hearing of matters seriously in dispute will take up the time of the Courts, at the trial of an action, whereby an economy of public time will be effected. It is in effect another instance in which the policy of the new Rules is conspicuously shown, viz : the desire to save expense, or to speak more accurately, to throw the expense on the party causing more than the minimum amount of expense, while in no other way coercing his actions, but leaving him free to admit or refuse to admit any facts, provided only that if he acts unreasonably he has to pay the costs occasioned thereby.

Six days are given during which the admissions may be ^{Further time.} made, and further time can be had under O. 64, r. 8, by consent ; or if consent is refused by summons, the cost of which will hardly be thrown upon the party not unreasonably asking for it.

It is in fact simply an extension to facts of Rule 5, Scheme. H. T. 1853, No. 30 (the present Rule 2), which applies to documents alone, while extending the forty-eight hours therein specified to the more practicable limit of six days. It is almost to be regretted that the last clause is omitted, namely, that making its use obligatory if expense would have been saved thereby.

The limitation placed by O. 31 upon the exhibition of ^{Discovery} interrogatories is nevertheless an extension of the power ^{New Prac-} given by the Common Law Procedure Acts, under which ^{tice.} a judge's order was in all cases necessary. If an unbiassed master or judge considers that interrogatories may be exhibited in a particular action with advantage, all the good and none of the abuse of discovery is obtained. The real facts are got at quickly, and thereupon, perhaps, even

DISCOVERY.

the settlement of the action itself effected. It does not necessarily follow that because leave is given to the plaintiff to interrogate that therefore the defendant will also get liberty to do so, although this will doubtless generally be the case. The same remarks practically apply to production of documents, the order for which is really placed in the discretion of the Court, while the costs of discovery are to be allowed only when it has been reasonably asked for, and before the application £5 must be paid into Court.

When
leave
given.

The cases in which leave will be given will depend almost as much upon the conduct of the respondent as upon the merits of the application itself. Rule 2 says expressly, "In deciding upon any application for leave to exhibit interrogatories account shall be taken of any offer which may be made by the party sought to be interrogated (1) to deliver particulars, (2) to make admissions, (3) or to produce documents relating to the matter in question or any of them." Whatever objections may be felt as to allowing interrogatories there will probably be none to allowing production of all documents to which privilege cannot be pleaded; and the chief question will be if the respondent offers this, and also, perhaps, particulars and admissions, whether the particulars and admissions he offers do not do away with the necessity for the interrogatories.

Notice to
admit.

The notice to admit specific facts has been already alluded to, and attempts will no doubt be made by it to do what is now often done by interrogatories. If a proper offer is made of particulars and admissions, and the notice to admit specific facts is confined to the kind of facts it is obviously intended to apply to, there will be a marked improvement in the conduct of an ordinary action; and interrogatories can be exhibited in addition in cases where they seem necessary. The fault as to interrogatories under the system initiated by the Judicature Acts has been the application to Common Law actions of machinery manu-

Fault of
interroga-
tories
under Old
'vice.

COSTS.

factured and intended only for the class of actions which particularly belongs to the Chancery side. The two classes are distinct, and the new provisions, of which only the barest outline has been given, will probably enable the Master to apply the machinery which is most fitting for it to each particular action as it comes under his consideration.

The case of *In re Chapman* and others of a similar character make it probable that but little work comparatively speaking is intended to be done in chambers by counsel, and therefore it will be unfair that any of the blame which will deservedly fall upon delay and expense should be laid to their charge. The officials and the solicitors of the parties will be responsible for the way the new system works, and now that they have a tool with which good work can be done, and are not hampered in the way they have to use it, official discretion will doubtless rise to the exigencies of each occasion as it presents itself to them in practice.

Counsel and solicitors under new practice.

The subject of costs needs some few words written about it, as the changes introduced by the new Rules with reference to it are greater than would at first sight appear.

In the first place, all the old provisions against prolixity in the endorsement on the writ, in pleadings, in interrogatories and the answers thereto, as well as in the title and subject-matter of affidavits, have been re-enacted, together with fresh ones, upon the same lines. And

Old provisions re-enacted.

secondly, the question of costs is placed more in the power of the judges and masters by express provisions, although those of trustees and mortgagees, when they have not been unreasonable, have been especially excepted therefrom. There is now, by O. 65, r. 1, no necessity to apply to the judge who tries a jury case *at the trial* to order that costs shall not follow the event. This does away with the necessity for a great deal of old case law, such as that contained in *Baker v. Oakes*, 2 Q. B. D. 171, and *Collins v. Welch*, 5 C. P. D. 27, and similar

Discretion.

At the trial.

COSTS.

Unnecessary proceedings.	cases. Moreover, there is a general set made by the new Rules against unnecessary expense in proceedings, and indeed against all kinds of unnecessary and improper proceedings themselves. Some of these may have to be paid for by the offending solicitor personally: O. 65, r. 11; and the costs of a brief, if delivered too soon, are specially disallowed by O. 65, r. 27 (49), so that in other cases he may suffer indirectly.
Effect on solicitor.	
On counsel.	Counsel, too, suffer under the new Practice, as they have done by recent decisions, like <i>In re Chapman</i> , 10 Q. B. D. 54, and <i>In re Blythe and Fanshawe</i> , 31 W. R. 284; for no retaining fees are now allowed as between party and party: O. 65, r. 27 (44), nor, as it would appear, even between solicitor and client, except, of course, when expressly authorised by the client, are fees for conferences, when fees are charged also for drawing and settling or perusing pleadings, affidavits, deeds, or abstracts, either in the case of counsel or solicitor; unless, indeed, there is some special reason for their being excepted from this general rule; a fact of which it will probably be somewhat difficult to convince the taxing masters. When a cause is struck out of the paper by the fault of the plaintiff, the defendant is to get the costs of its first setting down, whether he gains the day eventually or not: O. 65, r. 27 (50), and other provisions, by which costs are secured to one side in any event, are made as to interrogatories by O. 31, r. 3, and a refusal to admit specific facts by O. 32, r. 4. The idea of making the offending party pay the costs caused by his own misconduct in any event is a very wholesome one, and the provision as to the costs of applications for matters not included in the summons for directions contained in O. 30, r. 3, is only
Costs of a proceeding in any event.	another form of it. The limitation of the number of counsel to be employed in small cases in O. 65, r. 27 (46), is but proper; but the very small economy contained in O. 65, r. 27 (19), viz., the reduction of the amount of costs to be tendered on service of a petition from £2 2s.,
Number of counsel.	
Costs tendered on service of peti-	

COSTS.

as at present, to £1 10s. under the new régime, is of questionable utility. While 10s. a-day is allowed for each case in the paper, and cases remain there frequently for twenty days, it would be well to begin with a reduction in a more flagrant case than the one in which that referred to has been made

The result, however, of a perusal of the new regulations with regard to costs is rather to excite an admiration for the wisdom of our predecessors as regards the enactments they have made, but which we have allowed to lie practically dormant, than to extract any new provisions of a far-seeing character out of the new code. Indeed the provisions as to costs, when collected together in one volume from the various hiding places in which they have lain of late, seem all that could by any possibility be required, with the exception of some that have been alluded to in the chapter on "Reforms Still Needed" at the end of the Hints on Practice.

Old provisions.

Ten new ones.

There is, however, throughout the new Rules a constant threat as to the consequences of unnecessary proceedings (e.g., in administration and interlocutory applications) that it will be well to give full value to. As, however, this subject has been touched upon in the Introduction it need hardly be dwelt on at greater length here.

General principle.

Apologising for a book must not only bring to the recollection at once the hackneyed and often misused proverb, "Qui s'excuse s'accuse," but also the appeal for sympathy of the parricide, namely, that he was a miserable orphan. No one should waste time over an epilogue who has written a readable book; but this critical edition of the new Rules coming out at such a time and in such haste requires some apology, if only that of the punctiliously polite Greek mentioned in 'Vice Versâ,' who commenced his address to the large crowd that had come to the funeral of his infant child, by begging to be excused for the small size of the corpse. No kind friend can truly say that after the notes in this edition the new Rules are any

Conclusion.

CONCLUSION.

easier, for the notes give, in most cases, simply the source from which each rule is taken, and the place in the *Hints on Practice* where the corresponding rule under the old régime was treated of; while the side-notes and index merely save the reader from a task, uninteresting perhaps, but necessary if he would have his copy of the compendium now governing universal practice in a form which he can make easy reference to.

As to the time at which this edition addresses itself to the public, the motto "*sat cito si sat bene*" has not been forgotten; but the impracticable and uninviting form in which new enactments are generally given to the legal world has caused the getting ready at the earliest possible moment of a book which claims the merit of not only being one of the very first in the field, but of containing in a handy form all the necessary information as to the new Rules procurable at the moment though without the history of them; more than which nothing but a considerable additional period would have enabled any writer to do effectually.

COMPARATIVE TABLE OF ORDERS AND RULES.

(Where a Rule is not identical but similar only, an asterisk is prefixed to it.)

Judicature Act.	Rules of Supreme Court, 1883.	Judicature Act.	Rules of Supreme Court, 1883.
O. 1 . 1	O. 1 . *1	O. 10 .	O. 10 .
. 3	. 2	— .	O. 11 . 1a, b, c
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. 7, 8	. *7, 8	. 5	. 7
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O. 5 . 5—7	. 10—12	O. 13 . 1	O. 13 . *1
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. 11e	. *17	. 3, 5	. *3
O. 6 .	O. 6 .	. 4, 5	. 4
O. 7 .	O. 7 . 1, 2	. 6	. *5
. —	. 3	. —	. 6, 7
O. 8 . 1, 2	O. 8 . 1, 2	. 7, 8	. 8, 9
. —	. 3	. —	. 10
O. 9 . 1	O. 9 . 1	. 5a	. *11
. 2, 3	. *2, 3	. 9	. *12
. 4, 5	. 4, 5	. —	. 13, 14
. 6	. *6	O. 14 . 1—4	O. 14 . *1—4
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COMPARATIVE TABLE OF ORDERS AND RULES.

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. 12b	. *49	. —	. 19
. 13—17	. 50	O. 19 . 13, 15	. 20, 21
. 18	. 51—53	O. 30 . 1	O. 22 . *1
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. 21	O. 17 . 1—3	. 2, 3	. 4, 5
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O. 50 . 1—3	. 8—10	. 4	. 7
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. 4	. 9, 10	O. 23 . 1—2a	O. 26 . *1—3
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. 22	. *23	. —	. 2
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APPENDIX A.

Appx. A.
Part I.
No. 1.

PART I.

FORMS OF WRITS OF SUMMONS, &c.

GENERAL FORM OF WRIT OF SUMMONS.

No. 1.

18 . [*Here put the letter and number.*]
In the High Court of Justice.
Division.

Between *A. B.*, Plaintiff,
and
C. D. and *E. F.*, Defendants.

Victoria, by the grace of God, &c.

To *C. D.* of in the county of

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of *A. B.*; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, **ROUNDELL, EARL of SELBORNE**, Lord High Chancellor of Great Britain, the day of , in the year of Our Lord One thousand eight hundred and .

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant [*or defendants*] may appear hereto by entering an appearance [*or appearances*] either personally or by solicitor at the Central Office, Royal Courts of Justice, London.

Indorsements to be made on the writ before issue thereof.

The plaintiff's claim is for, &c.

This writ was issued by the said plaintiff, who resides at ,
or, this writ was issued by *E. F.*, of , whose address for
service is , solicitor for the said plaintiff, who resides
at , *or*, this writ was issued by *G. H.*, of

RULES OF THE SUPREME COURT.

Appx. A whose address for service is _____, agent for _____ of
Part I. _____, solicitor for the said plaintiff, who resides at
Nos. 1, 2. [mention the city, town, or parish, and also the name of the street and
 _____ number of the house of the plaintiff's residence, if any].

Indorsement to be made on the writ after service thereof.

This writ was served by me at _____ on the defendant
 on the _____ day of _____,
 18 .
 Indorsed the _____ day of _____, 18 .
 (Signed)
 (Address)

No. 2.

SPECIALLY INDORSED WRIT, ORDER III., RULE 6.

18 . [Here put the letter and number.]
 In the High Court of Justice.
 Division.

Between _____, Plaintiff,
 and _____, Defendant.

Victoria, by the grace of God, &c., to _____ of
 in the county of _____.

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of _____. And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, **ROUNDELL, EARL of SELBORNE**, Lord High Chancellor of Great Britain, the _____ day of _____, in the year of Our Lord, One thousand eight hundred and _____.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at the Central Office, Royal Courts of Justice, London.

Statement of Claim.

The plaintiff's claim is _____

Particulars.

Place of trial _____

(Signed)

And the sum of £ _____, [or such sum as may be allowed on taxation] for costs. If the amount claimed is paid to the plaintiff or his solicitor or agent within four days from the service hereof, further proceedings will be stayed.

This writ was issued by the said plaintiff, who resides at _____
 [or] this writ was issued by *E. P.*, of _____ whose address for service is _____, solicitor for the said plaintiff, who resides at _____
 at _____, [or] this writ was issued by *G. H.*, of _____ whose address for service is _____, agent for _____ of _____
 _____, solicitor for the said plaintiff, who resides at _____

APPENDIX OF FORMS.

This writ was served by me at _____ on the _____ day of _____ 18 ____ .
Indorsed the _____ day of _____ 18 ____ .

(Signed) _____
(Address) _____

Appx. A.
Part I.
Nos. 2-4.

No. 3.

WRIT FOR ISSUE FROM DISTRICT REGISTRY.

18 . [*Here put the letter and number.*]
In the High Court of Justice.
Division.

(MANCHESTER) DISTRICT REGISTRY.

**Between , Plaintiff,
and
 , Defendant.**

Victoria, by the grace of God, &c., to
in the of

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of . And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, ROUNDELL, EARL OF SELBORNE, Lord High Chan-
cellor of Great Britain, the day of in the
year of Our Lord One thousand eight hundred and

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district.*

* Insert address of office.

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

The plaintiff's claim is

This writ, &c.

N.B.—*The address for service must be within the district.*

This writ was served, &c.

No. 4.

SPECIALLY INDORSED WRIT FOR ISSUE FROM DISTRICT REGISTRY.

18 . [*Here put the letter and number.*]
In the High Court of Justice.
Division.

(MANCHESTER) DISTRICT REGISTRY.

Between _____, Plaintiff,
and _____, Defendant.

RULES OF THE SUPREME COURT.

Appx. A.
Part I.
Nos. 4, 5.

Victoria, by the Grace of God, &c., to _____ of _____
in the _____ of _____

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of _____

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.
Witness, &c.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district.*

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

* Insert
address of
office.

Statement of Claim.

The plaintiff's claim is _____

Particulars.

Place of Trial _____

(Signed) _____

And the sum of £ _____, [or such sum as may be allowed on taxation,] for costs. If the amount claimed is paid to the plaintiff or his solicitor or agent within four days from the service hereof, further proceedings will be stayed.

This writ, &c.

N.B.—*The address for service must be within the district.*

This writ was served, &c.

No. 5.

WRIT FOR SERVICE OUT OF THE JURISDICTION, OR WHERE NOTICE IN LIEU OF SERVICE IS TO BE GIVEN OUT OF THE JURISDICTION.

18 . [Here put the letter and number.]

In the High Court of Justice.

Division.

Between A. B., Plaintiff,
and

C. D. and E. F., Defendants.

Victoria, by the grace of God, &c.

To C. D. of _____

We command you, C. D., That within [here insert the number of days directed by the Court or Judge ordering the service or notice] after the service of this writ [or notice of this writ, as the case may be] on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the _____ Division of our High Court of Justice in an action at the suit of A. B.; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

APPENDIX OF FORMS.

Memoranda and Indorsement as in Form No. 1.

Indorsement to be made on the writ before the issue thereof.

N.B.—This writ is to be used where the defendant, or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominion, notice of the writ, and not the writ itself, is to be served upon him.

**Appx. A.
Part I.
Nos. 5—7.**

No. 6.

SPECIALLY INDORSED WRIT FOR SERVICE OUT OF THE JURISDICTION.

[Heading as in Form 1.]

Victoria, by the grace of God, &c., to _____ of _____,
in the _____ of _____.

We command you, that within* _____ days after service †
of this writ on you, inclusive of the day of such service, you cause an
appearance to be entered for you in an action at the suit of _____

And take notice, that in default of your so doing the plaintiff may
proceed therein, and judgment may be given in your absence.

Witness, &c.

N.B.—This writ is to be served within twelve calendar months
from the date thereof, or if renewed, within six calendar months
from the date of the last renewal, including the day of such date,
and not afterwards.

Appearance is to be entered at the Central Office, Royal Courts
of Justice, London.

Statement of Claim.

The plaintiff's claim is

Particulars.

Place of Trial

(Signed)

And £ _____ [or such sum as may be allowed on taxation]
for costs.

If the amount claimed is paid to the plaintiff or his solicitor
or agent within* _____ days from service† hereof, further
proceedings will be stayed.

This writ was issued, &c.

This writ [or notice of this writ] was served, &c.

N.B.—This writ is to be used where the defendant, or all the
defendants, or one or more defendant or defendants, is or are out of
the jurisdiction. When the defendant to be served is not a British
subject, and is not in British dominions, notice of the writ and not
the writ itself is to be served upon him.

* Insert
number
of days
directed by
Court or
Judge.

† If notice
of the writ is
to be served,
insert here,
"of notice."

* Insert
number
of days
limited for
appearance.
† If notice to
be served,
insert here
"of notice."

No. 7.

WRIT FROM DISTRICT REGISTRY FOR SERVICE OUT OF THE JURISDICTION.

[Heading as in Form 3.]

Victoria, by the grace of God, &c., to _____ of _____

RULES OF THE SUPREME COURT.

Appx. A. We command you, that within* days after service
Part I. off this writ on you, inclusive of the day of such service, you
Nos. 7, 8. cause an appearance to be entered for you in an action of the suit
of

* Insert
number
of days
directed by
Court or
Judge.

† If notice of
writ is to
be served,
insert here,
"notice of."

* Insert
address of
office.

And take notice, that in default of your so doing the plaintiff
may proceed therein, and judgment may be given in your absence
Witness, &c.

N.B.—This writ is to be served within twelve calendar months
from the date thereof, or if renewed, within six calendar months
from the date of the last renewal, including the day of such date,
and not afterwards.

A defendant who resides or carries on business within the above-
named district, must enter appearance at the office of the registrar
of that district.*

A defendant who neither resides nor carries on business within
the said district may enter appearance either at the office of the
said registrar or at the Central Office, Royal Courts of Justice,
London.

The plaintiff's claim is

This writ was issued by, &c.

N.B.—*The address for service must be within the district.*

This writ [or notice of this writ] was served, &c.

N.B.—This writ is to be used where the defendant, or all the
defendants, or one or more defendant or defendants, is or are out of
the jurisdiction. Where the defendant to be served is not a British
subject, and is not in British dominions, notice of the writ and not
the writ itself is to be served upon him.

No. 8.

SPECIALLY INDORSED WRIT FROM DISTRICT REGISTRY FOR SERVICE OUT OF THE JURISDICTION.

[Heading as in Form 3.]

Victoria, by the grace of God, &c., to of
in the of

* Insert
number
of days
directed by
Court or
Judge.

† If notice of
writ is to be
served,
insert here,
"notice of."

* Insert
address of
office.

We command you, that within* days after service off
this writ on you, inclusive of the day of such service, you cause an
appearance to be entered for you in an action at the suit of

And take notice, that in default of your so doing the plaintiff
may proceed therein, and judgment may be given in your absence.
Witness, &c.

N.B.—This writ is to be served within twelve calendar months
from the date thereof, or if renewed, within six calendar months
from the date of the last renewal, including the day of such date,
and not afterwards.

A defendant who resides or carries on business within the above-
named district must enter appearance at the office of the registrar
of that district.*

A defendant who neither resides nor carries on business within
the said district may enter appearance either at the office of the
said registrar or at the Central Office, Royal Courts of Justice,
London.

APPENDIX OF FORMS.

Statement of Claim.

The plaintiff's claim is

Appx. A.
Part I.
Nos. 8—10.

Particulars.

Place of Trial

(Signed)

and £ , [or such sum as may be allowed on taxation]
for costs. If the amount claimed be paid to the plaintiff or his
solicitor or agent within* days from service† hereof,
further proceedings will be stayed.

This writ was issued by, &c.

N.B.—*The address for service must be within the district.*

This writ [or notice of this writ] was served, &c.

N.B.—This writ is to be used where the defendant, or all the
defendants, or one or more defendant or defendants, is or are out of
the jurisdiction. Where the person to be served is not a British
subject, and is not in British dominions, notice of the writ and not
the writ itself is to be served upon him.

* Insert
number
of days
limited for
appearance
† If notice of
writ is to be
served,
insert here,
'of notice.'

No. 9.

NOTICE OF WRIT IN LIEU OF SERVICE TO BE GIVEN OUT OF
THE JURISDICTION.

[*Heading as in Form 1.*]

To *G. H.*, of

Take notice, that *A. B.*, of , has commenced an action
against you, *G. H.*, in the Division of Her Majesty's
High Court of Justice in England, by writ of that Court, dated
the day of , A.D. 18 ; which writ is in-
dorsed as follows [*copy in full the indorsements*], and you are
required within days after the receipt of this notice,
inclusive of the day of such receipt, to defend the said action, by
causing an appearance to be entered for you in the said Court to the
said action; and in default of your so doing, the said *A. B.* may
proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance per-
sonally or by your solicitor at the Central Office, Royal Courts of
Justice, London.

(Signed) *A. B.*, of , &c.

or
X. Y., of , &c.
Solicitor for *A. B.*

In the High Court of Justice.
Division.

No. 10.

NOTICE OF WRIT IN LIEU OF SERVICE TO BE GIVEN OUT OF
THE JURISDICTION.

[*Heading as in No. 3.*]

To of
Take notice, that of has commenced an

RULES OF THE SUPREME COURT.

Appx. A. action against you in the Division of Her
Part I. Majesty's High Court of Justice in England, by writ of that Court,
Nos. 10, 11. dated the day of , 18 , which writ is in-
 _____ dorsed as follows :—

And you are hereby required within days after the receipt of this notice, inclusive of the day of such receipt, to defend this action by causing an appearance to be entered for you thereto, and in default of your so doing the said may proceed therein, and judgment may be given in your absence.

If you reside or carry on business within the above-named district, appearance is to be entered at the office of the registrar for that district.*

* Insert
address of
office.

If you do not either reside or carry on business within that district, appearance is to be entered either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

(Signed)

This notice was served by, &c.

N.B.—This notice is to be used where the person to be served is not a British subject, and is not in British dominions.

No. 11.

WRIT OF SUMMONS IN ADMIRALTY ACTION IN REM.

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Probate, Divorce and Admiralty Division.

Between A. B., Plaintiff,
and

The owners of the
Victoria by the grace of God, &c.

To the owners and parties interested in the ship or vessel
of the port of [*or cargo, &c., as the case may be.*]

We command you, that within eight days after the service of this writ, inclusive of the day of such service, you do cause an appearance to be entered for you in the Probate, Divorce, and Admiralty Division of our High Court of Justice in an action at the suit of A. B.: and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, &c.

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant [*or defendants*] may appear hereto by entering an appearance [*or appearances*] either personally or by solicitor at the Central Office, Royal Courts of Justice, London.

Indorsements to be made on the writ before issue thereof.

The plaintiff's claim is for, &c.

This writ was issued by, &c.

APPENDIX OF FORMS.

Indorsement to be made on the writ after service thereof.

This writ was served by X. Y. [*here state the mode in which the service was effected, whether on the ship, cargo, or freight, according to Order IX., Rules 11, 12, 13, and 14, as the case may be*] on the day of 18 .

**Appx. A.
Part I.
Nos. 11—
13.**

(Signed,)

X. Y.

No. 12.

WRIT IN ADMIRALTY ACTIONS FOR ISSUE FROM DISTRICT REGISTRY.

18 . [*Here put letter and number.*]

In the High Court of Justice.
Division.

(MANCHESTER) DISTRICT REGISTRY.

Between , Plaintiff,

and

The owners of the ,
Defendants.

Victoria, by the grace of God, &c., to the owners and
parties interested in the ship or vessel of the port of
and

We command you, that within eight days after the service of this writ, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of

And take notice, that in default of your so doing, the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, &c.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district.*

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

* Insert address of office.

The plaintiff's claim is for

This was issued by, &c.

N.B.—*The address for service must be within the district.*

This writ was served by me*

on

the

day of

18 .

Indorsed the

day of

18 .

(Signed)
(Address)

* State mode of service.

No. 13.

AFFIDAVIT TO LEAD WARRANT IN A CAUSE OF RESTRAINT.

[*Heading as in Form 11.*]

I, A. B., make oath and say as follows:—

RULES OF THE SUPREME COURT.

Appx. A.
Part I.
Nos. 13—
16.

1. I am the lawful owner of [state number] sixty-fourth shares of the or vessel belonging to the port of ; and the value of my said shares amounts to the sum of pounds or thereabouts.

2. The said vessel is now lying at , and is in the possession or under the control of , the owner of [state number] sixty-fourth shares thereof, and is about to be despatched by him on a voyage to against my consent.

3. I am desirous that the said vessel be restrained from proceeding to sea, until security be given to the extent of my interest therein for her safe return to the said port of [the port to which the vessel belongs], and the aid and process of the High Court of Justice are necessary in that behalf.

Sworn, &c.

No. 14.

AFFIDAVIT TO LEAD WARRANT IN A CAUSE OF POSSESSION.

[Heading as in Form 11.]

I, A. B., make oath and say as follows:—

1. I am the lawful owner of [state number] sixty-fourth shares of the or vessel , belonging to the port of

2. The said vessel is now lying at , and is in the possession or under the control of [state name, address, and description of the person retaining possession, and state whether he is the master or part owner, and if owner, of how many shares]; and the said refuses to deliver up the same to me; [and the certificate of registry of the said vessel is also unlawfully withheld from me by the said , who is in possession thereof].

3. The aid and process of the High Court of Justice are necessary to enable me to obtain possession of the said vessel [and of the certificate of registry].

Sworn, &c.,

Before me,

C. D., &c.

No. 15.

PRÆCIPE FOR WARRANT.

[Heading as in Form 11.]

I, A. B., solicitor for the plaintiff, pray a warrant to arrest [state name and nature of property].

Dated the day of , 18 .

[To be signed by the solicitor, or by his clerk for him.]

No. 16.

PRÆCIPE FOR SERVICE BY THE MARSHAL OF ANY INSTRUMENT IN REM OTHER THAN A WARRANT.

[Heading as in Form 11.]

I, A. B., solicitor for the [state whether plaintiff or defendant],

APPENDIX OF FORMS.

pray that the [*state nature of instrument*] left herewith be duly executed. **Appx. A.
Part I.**

Dated the day of , 18 .

**Nos. 16—
19.**

[*To be signed by the solicitor, or by his clerk for him.*]

No. 17.

WARRANT OF ARREST IN ADMIRALTY ACTION IN REM.

[*Heading as in Form 11.*]

Victoria, by the grace of God, &c.

To the Marshal of the Probate, Divorce and Admiralty Division
of Our High Court of Justice, and to all and singular his substitutes
[or To the Collector or Collectors of Customs at the Port of].

We hereby command you to arrest the ship or vessel of
the port of [*and the cargo and freight, &c., as the case
may be*], and to keep the same under safe arrest, until you shall
receive further orders from Us.

Witness, &c.

No. 18.

FORM OF MEMORANDUM FOR RENEWED WRIT.

[*Heading as in Form 1.*]

Seal renewed writ of summons in this action indorsed as follows:—

[*Copy original writ and the indorsements.*]

No. 19.

CERTIFICATE OF SOLICITOR AS TO ASSIGNMENT OF CAUSE OR MATTER.

[*Heading as in Form 1.*]

I, A. B., solicitor for the above-named , hereby certify
that the writ [summons or petition] annexed hereto relates to the
administration of the same trust, [or, the winding up of the same
company,] as or is so connected with, the cause or matter entitled
[*insert title*] and assigned to the Hon. Mr. Justice , as
to be conveniently dealt with by the same Judge.

PART II.

**Appx. A.
Part II.
No. 1.**

FORMS OF ENTRY OF APPEARANCE, AND OF BAIL AND RELEASES IN ADMIRALTY ACTIONS.

No. 1.

MEMORANDUM OF APPEARANCE IN GENERAL.

In the High Court of Justice.

Division.

Between

18 . No. .
, Plaintiff,
and
, Defendant.

RULES OF THE SUPREME COURT.

Appx. A.
Part II.
Nos. 1--4.

Enter an appearance for _____ in this action.
Dated the _____ day of _____, 18 .
(Signed)
of *
Agent for
of

* If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given

No. 2.

NOTICE OF ENTRY OF APPEARANCE.

[Heading as in Form 1.]

Take notice, that having this day entered an appearance at the Central Office, Royal Courts of Justice [or at the office of the registrar of the _____ District Registry] for the defendant to the writ of summons in this action.

[If statement of claim is required, add] The said defendant require delivery of a statement of claim.

Dated the _____ day of _____, 18 .
(Signed)
of
Agent for
Solicitor for the defendant.

To

No. 3.

NOTICE LIMITING DEFENCE.

[Heading as in Form 1.]

Take notice that the [above-named] defendant [A. B.] limits his defence to part only of the property mentioned in the writ of summons, namely, to the close, called "The Big Field."

Dated the _____ day of _____, 18 .
(Signed)
of
Agent for
of
Solicitors for the above-named defendant.

To Messrs.
The Plaintiff's Solicitors.

No. 4.

ENTRY OF APPEARANCE LIMITING DEFENCE.

[Heading as in Form 1.]

† If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof

Enter an appearance for the defendant _____ in this action.
The said defendant limits his defence to part only of the property mentioned in the writ of summons, namely, to the close called "The Big Field."
The address of _____ is _____
Dated the _____ day of _____, 18 .
(Signed)
of†
Agent for
of

APPENDIX OF FORMS.

No. 5.

ENTRY OF APPEARANCE, Order XVI., Rule 49.

[Heading as in Form 1.]

Enter an appearance for _____ to the notice issued in this
action on the _____ day of _____, 18, by the defend-
ant _____ under the Rules of the Supreme Court, 1883,
Order XVI., Rule 49.

Dated the _____ day of _____, 18 .

(Signed)
of*
Agent for
of

Appx. A.
Part II.
Nos. 5—8.

* If this
address be
beyond
three miles
from the
Royal
Courts of
Justice, an
address for
service
within
three miles
thereof
must be
given.

No. 6.

ENTRY OF APPEARANCE, Order XVII., Rule 5.

[Heading as in Form 1.]

Enter an appearance for _____, who has been served with
an order dated the _____ day of _____ to carry on and
prosecute the proceedings in this action.

Dated the _____ day of _____, 18 .

(Signed)
of*
Agent for
of

* If this
address be
beyond
three miles
from the
Royal
Courts of
Justice, an
address for
service
within
three miles
thereof
must be
given.

No. 7.

ENTRY OF APPEARANCE TO COUNTER CLAIM.

[Heading as in Form 1.]

Enter an appearance for _____ to the counter claim of the
above-named defendant _____ in this action.

Dated the _____ day of _____, 18 .

(Signed)
of*
Agent for
of

* If this
address be
beyond
three miles
from the
Royal
Courts of
Justice, an
address for
service
within
three miles
thereof
must be
given.

No. 8.

AFFIDAVIT FOR ENTRY OF APPEARANCE AS GUARDIAN.

[Heading as in Form 1.]

I, _____ of _____, make oath and say as follows:—
A.B., of _____, is a fit and proper person to act as
guardian *ad litem* of the above-named infant defendant, and has no
interest in the matters in question in this action [matter] adverse
to that of the said infant, and the consent of the said A. B. to act
as such guardian is hereto annexed.

Sworn, &c.

[To this affidavit shall be annexed the document signed by such
guardian in testimony of his consent to act.]

RULES OF THE SUPREME COURT.

**Appx. A.
Part II.
Nos. 9, 10.**

No. 9.

PRÆCIPUE FOR NOTICE OF BAIL.

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Probate, Divorce and Admiralty Division.

**Between A. B., Plaintiff,
and**

The Owners of the

I, A. B., solicitor for the [*state whether plaintiff or defendant*],
tender the undermentioned persons as bail on behalf of [*state the*
name, address, and description of the party for whom bail is to be given],
in the sum of £ **to answer judgment in this action (if for**
costs add, so far as regards costs).

Names, Addresses, and Descriptions of Sureties.	Referees.
1. _____	_____
2. _____	_____

Dated the **day of** **18 .**

[To be signed by the solicitor, or by his clerk for him.]

[The names of bankers should if possible be given as referees.]

No. 10.

NOTICE OF BAIL.

[Heading as in Form 9.]

Take notice that A.B., solicitor for the [*state whether plaintiff or*
defendant], **tenders the under-mentioned persons as bail on behalf of**
[state name, address, and description of the party for whom bail is to
be given], in the sum of £ **to answer judgment in this**
action (if for costs add, so far as regards costs).

Names, Addresses, and Descriptions of Sureties.	Referees.
1. _____	_____
2. _____	_____

Dated the **day of** **18 .**

**G.H.,
Marshal.**

APPENDIX OF FORMS.

No. 11.

MARSHAL'S REPORT AS TO THE SUFFICIENCY OF PROPOSED BAIL.

[*Heading as in Form 9.*]

Appx. A.
Part II.
Nos. 11—
18.

I hereby report that I have made diligent inquiry and certified myself that [*state names, addresses, and descriptions of the two sureties*], the proposed bail on behalf of [*state name, address, and description of the party for whom bail is to be given*] to answer judgment in this action (*if for costs add, so far as regards costs*) are respectively sufficient sureties for the sum of £ [*state the sum in letters*].

Dated the day of 18 .

G.H.,
Marshal.

No. 12.

PRÆCIPUE FOR BAIL BOND.

[*Heading as in Form 9.*]

I, A. B., solicitor for the [*state whether plaintiff or defendant*], pray a bail bond for a signature of the sureties named in the annexed notice of bail and report of the Marshal.

Dated the day of 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 13.

[BAIL BOND.

[*Heading as in Form 9.*]

Whereas an action of has been commenced in the High Court of Justice on behalf of against [*and against intervening*]. Now, therefore, we and hereby jointly and severally submit ourselves to the jurisdiction of the said Court, and consent that, if he the said shall not pay what may be adjudged against him in the said action with costs, execution may issue forth against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding £ .

(*Signatures of sureties.*)

This bail bond was signed by
the said and
 the sureties,
the day of 18 .

Before me,

[*To be signed before the Registrar, or one of the clerks in the Registry, or before a Commissioner for Oaths.*]

RULES OF THE SUPREME COURT.

Appx. A.
Part II.
Nos. 14—
17.

No. 14.

AFFIDAVIT OF JUSTIFICATION.

[*Heading as in Form 9.*]

I, [*state name, address, and description*], one of the proposed sureties for [*state name, address, and description of the person for whom bail is to be given*], make oath and say, that I am worth more than the sum of [*state the sum in letters in which bail is to be given*] pounds after the payment of all my debts.

Sworn, &c.

No. 15.

PRECIPE FOR RELEASE.

[*Heading as in Form 9.*]

I, A. B., solicitor for the [*state whether plaintiff or defendant*] in an action [*state nature of action*], commenced on behalf of against the [*state name and nature of property*], now under arrest by virtue of a warrant issued from the Registry of this Division, pray a release of the said [bail having been given, or the action having been withdrawn by me before an appearance was entered therein, &c., as the case may be], and there being no caveat against the release thereof outstanding.

Dated the day of 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 16.

RELEASE.

In the High Court of Justice.

Probate, Divorce and Admiralty Division.

Victoria, by the Grace of God, &c. To the Marshal of the Probate, Divorce and Admiralty Division of our High Court of Justice and to all and singular his substitutes, greeting : Whereas in an action of commenced in our said High Court on behalf of against , we did command you to arrest the said and to keep the same under safe arrest until you should receive further orders from us. Now we do hereby command you to release the said from the arrest effected by virtue of our warrant in the said action, upon payment being made to you of all costs, charges, and expenses attending the care and custody of the property whilst under arrest in that action.

Witness, &c.

(Seal.)

Release

Taken out by

No. 17.

PRECIPE FOR CAVEAT RELEASE.

[*Heading as in Form 9.*]

I, A. B., solicitor for the plaintiff in an action [*state nature of cause*,

APPENDIX OF FORMS.

commenced on behalf of [state name, address and description of plaintiff],
against [state name and nature of property], pray a caveat against
the release of the said [state name and nature of property].

Dated the day of 18 .

[To be signed by the solicitor, or by his clerk for him.]

App. A.
Part II.
Nos. 17—
19.

No. 18.

PRÆCIPUE FOR CAVEAT WARRANT.

[Heading as in Form 9.]

I, [state name, address, and description], hereby undertake to enter
an appearance in any action that may be commenced in the High
Court of Justice against [state name and nature of the property], and
within three days after I shall have been served with a notice of
the commencement of any such action to give bail therein in a sum
not exceeding [state amount for which the undertaking is given]
pounds, or to pay such sum into the Admiralty Registry. And I
consent that all instruments and other documents in such action
may be left for me at

Dated the day of 18 .

[To be signed by the party, or by his solicitor.]

No. 19.

PRÆCIPUE TO WITHDRAW CAVEAT.

[Heading as in Form 9.]

I, A. B., solicitor for the [state whether plaintiff or defendant], pray
that the caveat against [state tenor of caveat], entered by me on the
day of , 18 , on behalf of [state name] may
be withdrawn.

Dated the day of 18 .

[To be signed by the person by whom the præcipe for the entry of the
caveat was signed.]

PART III.

GENERAL INDORSEMENTS ON WRITS OF SUMMONS.

Appx. A.
Part III.
s. 1.

SECTION I.

IN MATTERS ASSIGNED BY THE 34TH SECTION OF THE ACT TO THE
CHANCERY DIVISION.

1.

The plaintiff's claim is as a creditor of X. Y., of , Creditor to
deceased, to have the [real and] personal estate of the said X. Y. administer
administered. The defendant C. D., is sued as the administrator of estate.
the said X. Y. [and the defendants E. F. and G. H. as his co-heirs-
at-law].

2.

The plaintiff's claim is as a legatee under the will dated the Legatee to
day of 18 , of X. Y. deceased, to have the [real administer
and] personal estate of the said X. Y. administered. The defendant estate.

RULES OF THE SUPREME COURT.

Appx. A C. D. is sued as the executor of the said X. Y. [and the defendants
Part III E. F. and G. H. as his devisees].
ss. 1, 2 3.

Partner-
ship.

The plaintiff's claim is to have an account taken of the partner-
ship dealings between the plaintiff and defendant [under articles of
partnership dated the day of], and to have
the affairs of the partnership wound up.

4.

By mort-
gagee.

The plaintiff's claim is to have an account taken of what is due
to him for principal, interest, and costs on a mortgage dated the
day of made between [or by
deposit of title deeds], and that the mortgage may be enforced by
foreclosure or sale.

5.

By mort-
gagor.

The plaintiff's claim is to have an account taken of what, if any-
thing, is due on a mortgage dated and made between
[parties], and to redeem the property comprised therein.

6.

Raising
portions.

The plaintiff's claim is that the sum of l., which by
an indenture of settlement dated was provided for the
portions of the younger children of may be raised.

7.

Execution
of trusts.

The plaintiff's claim is to have the trusts of an indenture dated
and made between , carried into execu-
tion.

8.

Cancellation
or rectifica-
tion.

The plaintiff's claim is to have a deed dated and
made between [parties], set aside or rectified.

9.

Specific
perform-
ance.

The plaintiff's claim is for specific performance of an agreement
dated the day of , for the sale by the
plaintiff to the defendant of certain [freehold] hereditaments
at .

SECTION II

MONEY CLAIMS WHERE NO SPECIAL INDORSEMENT UNDER ORDER III,
RULE 6.

Goods sold.

The plaintiff's claim is l. for the price of goods sold.
[This form shall suffice whether the claim be in respect of goods
sold and delivered, or of goods bargained and sold.]

Money lent.

The plaintiff's claim is l. for money lent [and interest.]

Several
demands

The plaintiff's claim is l. whereof l. is for the
price of goods sold, and l. for money lent, and l.
for interest.

Rent.

The plaintiff's claim is l. for arrears of rent.

Salary, &c.

The plaintiff's claim is l. for arrears of salary as a clerk
[or as the case may be].

Interest.
General
average.

The plaintiff's claim is l. for interest upon money lent.
The plaintiff's claim is l. for a general average contribu-
tion.

APPENDIX OF FORMS.

The plaintiff's claim is	<i>l.</i> for freight and demurrage.	Appx. A.
The plaintiff's claim is	<i>l.</i> for lighterage.	Part III.
The plaintiff's claim is	<i>l.</i> for market tolls and stallage.	s. 2.
The plaintiff's claim is [. . .]	<i>l.</i> for penalties under the Statute.	Freight, &c. Tolls.
The plaintiff's claim is defendant as a banker.	<i>l.</i> for money deposited with the	Penalties. Banker's balance.
The plaintiff's claim is <i>l.</i> money expended] as a solicitor.	<i>l.</i> for fees for work done [and	Fees, &c., as solicitors.
The plaintiff's claim is <i>character, as auctioneer, cotton broker, &c.]</i>	<i>l.</i> for commission earned as [state	Commis- sion.
The plaintiff's claim is	<i>l.</i> for medical attendances.	Medical at- tendance, &c.
The plaintiff's claim is upon policies of insurance.	<i>l.</i> for a return of premiums paid	Return of premium.
The plaintiff's claim is	<i>l.</i> for the warehousing of goods.	Warehouse rent.
The plaintiff's claim is railway.	<i>l.</i> for the carriage of goods by	Carriage of goods.
The plaintiff's claim is house.	<i>l.</i> for the use and occupation of a	Use and occupation of houses.
The plaintiff's claim is	<i>l.</i> for the hire of [furniture].	Hire of goods.
The plaintiff's claim is	<i>l.</i> for work done as a surveyor.	Work done
The plaintiff's claim is	<i>l.</i> for board and lodging.	Board and lodging.
The plaintiff's claim is tuition of X. Y.	<i>l.</i> for the board, lodging, and	Schooling.
The plaintiff's claim is defendant as solicitor [or factor, or collector, or, &c.] of the plaintiff.	<i>l.</i> for money received by the de-	Money received.
The plaintiff's claim is under colour of the office of	<i>l.</i> for fees received by the defendant	Fees of office.
The plaintiff's claim is charged for the carriage of goods by railway.	<i>l.</i> for a return of money over-	Money overpaid.
The plaintiff's claim is by the defendant as	<i>l.</i> for a return of fees overcharged	
The plaintiff's claim is with the defendant as stakeholder.	<i>l.</i> for a return of money deposited	Return of money by stakeholder
The plaintiff's claim is defendant as stakeholder, and payable to plaintiff.	<i>l.</i> for money entrusted to the de-	Money won from stake- holder.
The plaintiff's claim is to the defendant as agent of the plaintiff.	<i>l.</i> for a return of money entrusted	Money entrusted to agent.
The plaintiff's claim is from the plaintiff by fraud.	<i>l.</i> for a return of money obtained	Money obtained by fraud.
The plaintiff's claim is the defendant by mistake.	<i>l.</i> for a return of money paid to	Money paid by mistake.
The plaintiff's claim is the defendant for [work to be done, left undone; or, a bill to be taken up; not taken up, or, &c.].	<i>l.</i> for a return of money paid to	Money paid for conside- ration which has failed.
The plaintiff's claim is deposit upon shares to be allotted.	<i>l.</i> for a return of money paid as a	

RULES OF THE SUPREME COURT.

Appx. A.	The plaintiff's claim is	<i>l.</i> for money paid for the defendant
Part III.	as his surety.	
ss. 2, 3.		
Money paid by surety for defendant.	The plaintiff's claim is the defendant.	<i>l.</i> for money paid for rent due by
Rent paid.	The plaintiff's claim is	<i>l.</i> upon a bill of exchange accepted
Money paid on accommodation bill.	[<i>or</i> indorsed] for the defendant's accommodation.	
Contribution by surety.	The plaintiff's claim is money paid by the plaintiff as surety.	<i>l.</i> for a contribution in respect of
By co-debtor.	The plaintiff's claim is	<i>l.</i> for a contribution in respect of
Money paid for calls.	The plaintiff's claim is	<i>l.</i> for money paid for calls upon shares,
Money payable under award.	against which the defendant was bound to indemnify the plaintiff.	
Life policy.	The plaintiff's claim is	<i>l.</i> for money payable under an
Money bond.	the life of X. Y., deceased.	<i>l.</i> upon a policy of insurance upon
	The plaintiff's claim is	<i>l.</i> upon a bond to secure a pay-
	ment of 1000 <i>l.</i> , and interest.	
Foreign judgment.	The plaintiff's claim is	<i>l.</i> upon a judgment of the
	Court, in the Empire of Russia.	
	The plaintiff's claim is	<i>l.</i> upon a cheque drawn by the
	defendant.	
Bills of exchange, &c.	The plaintiff's claim is	<i>l.</i> upon a bill of exchange accepted
	[<i>or</i> drawn, <i>or</i> indorsed] by the defendant.	
	The plaintiff's claim is	<i>l.</i> upon a promissory note made [<i>or</i>
	indorsed] by the defendant.	
	The plaintiff's claim is	<i>l.</i> against the defendant, A. B., as
	acceptor, and against the defendant, C. D., as drawer [<i>or</i> indorser]	
	of a bill of exchange.	
Surety.	The plaintiff's claim is	<i>l.</i> against the defendant as surety
	for the price of goods sold.	
	The plaintiff's claim is	<i>l.</i> against the defendant, A. B., as
	principal, and against the defendant, C. D., as surety, for the price	
	of goods sold [<i>or</i> arrears of rent, <i>or</i> for money lent, <i>or</i> for money	
	received by the defendant, A. B., as traveller for the plaintiffs,	
	<i>or</i> , &c.].	
Del credere agent.	The plaintiff's claim is	<i>l.</i> against the defendant as a del
	credere agent for the price of goods sold [<i>or</i> as losses under a policy].	
Calls.	The plaintiff's claim is	<i>l.</i> for calls upon shares.
Waygoing crops, &c.	The plaintiff's claim is	<i>l.</i> for crops, tillage, manure [<i>or</i> as
	the case may be], left by the defendant as outgoing tenant of a farm.	

SECTION III.

INDORSEMENT FOR COSTS.

Add to the above forms:—

And *l.* for costs ; and if the amount claimed be paid to the plaintiff or his solicitor within four days [*or if the writ is to be served*

APPENDIX OF FORMS.

out of the jurisdiction, or notice in lieu of service allowed, insert the time for appearances limited by the rules] from the service hereof, further proceedings will be stayed.

Appx. A.
Part III.
ss. 3, 4

SECTION IV.

DAMAGES AND OTHER CLAIMS.

The plaintiffs claim that an account be taken of [say what]. Account.

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller. Agent, &c.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and l. for arrears of wages].

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [or, &c.] of the plaintiff [and l. for money received as factor, &c.]

The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X. Y. to the defendant [or plaintiff]. Apprentices

The plaintiff's claim is for damages for non-compliance with the award of X. Y. Arbitration.

The plaintiff's claim is for damages for assault and false imprisonment [and for malicious prosecution]. Assault.

The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff C. D. By husband and wife,

The plaintiff's claim is for damages for injury by the defendant's negligence as solicitor of the plaintiff. Solicitor.

The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same]. Bailment.

The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same]. Pledge.

The plaintiff's claim is for damages for negligence in the custody of furniture lent on hire [or a carriage lent], [and for wrongfully, &c.] Hire.

The plaintiff's claim is for damages for wrongfully neglecting [or refusing] to pay the plaintiff's cheque. Banker.

The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts. Bill.

The plaintiff's claim is upon a bond conditioned not to carry on the trade of a Bond.

The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway. Carrier.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

The plaintiff's claim is for damages for breach of charterparty of ship [Mary]. Charter-party.

The plaintiff's claim is for return of household furniture [or, &c., or their value], and for damages for detaining the same. Claim for return of goods and damages.

RULES OF THE SUPREME COURT.

Appx. A.	The plaintiff's claim is for wrongfully depriving plaintiff of goods,
Part III.	household furniture, &c.
s. 4.	The plaintiff's claim is for damages for libel.
Damages for depriving of goods.	The plaintiff's claim is for damages for slander.
Defamation.	The plaintiff's claim is in replevin for goods wrongfully distrained.
Distress.	The plaintiff's claim is for damages for improperly distraining.
Replevin.	<i>[This form shall be sufficient, whether the distress complained of be wrongful or excessive, or irregular, and whether the claim be for damages only, or for double value.]</i>
Wrongful distress.	
Ejectment.	The plaintiff's claim is to recover possession of a house, No. _____ in _____ street [or of a farm called <i>Blackacre</i>], situate in the parish of _____, in the county of _____.
To establish title and recover rents.	The plaintiff's claim is to establish his title to [<i>here describe property</i>], and to recover the rents thereof. <i>[The two previous Forms may be combined.]</i>
Dower.	The plaintiff's claim is for dower.
Fishery.	The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.
	The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [or a business, or shares, or, &c.]
Fraud.	The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of <i>A. B.</i>
Guarantee.	The plaintiff's claim is for damages for breach of a contract of guarantee for <i>A. B.</i>
	The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.
Insurance.	The plaintiff's claim is for a loss under a policy upon the ship <i>Royal Charter</i> , and freight or cargo [or for return of premiums]. <i>[This Form shall be sufficient, whether the loss claimed be total or partial.]</i>
Fire insurance.	The plaintiff's claim is for a loss under a policy of fire insurance upon house and furniture.
	The plaintiff's claim is for damages for breach of a contract to insure a house.
Landlord and tenant.	The plaintiff's claim is for damages for breach of contract to keep a house in repair.
	The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.
Medical man.	The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.
Mischievous animal.	The plaintiff's claim is for damages for injury by the defendant's dog.
Negligence.	The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.
	The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.
	The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway station, from the defective condition of the station.
Lord Campbell's Act.	The plaintiff's claim is as executor of <i>A. B.</i> , deceased, for damages for the death of the said <i>A. B.</i> from injuries received while a

APPENDIX OF FORMS.

passenger on the defendant's railway, by the negligence of the defendant's servants.	Appx. A. Part III. s. 4.
The plaintiff's claim is for damages for breach of promise of marriage.	Promise of marriage.
The plaintiff's claim is in quare impedit for	Quare impedit.
The plaintiff's claim is for damages for the seduction of the plaintiff's daughter.	Seduction.
The plaintiff's claim is for damages for breach of contract to accept and pay for goods.	Sale of goods.
The plaintiff's claim is for damages for non-delivery [or short delivery, or defective quality, or other breach of contract of sale] of cotton [or, &c.]	
The plaintiff's claim is for damages for breach of warranty of a horse.	
The plaintiff's claim is for damages for breach of a contract to sell [or purchase] land.	Sale of land
The plaintiff's claim is for damages for breach of a contract to let [or take] a house.	
The plaintiff's claim is for damages for breach of a contract to sell [or purchase] the lease, with goodwill, fixtures, and stock in trade of a public-house.	
The plaintiff's claim is for damages for breach of covenant for title [or for quiet enjoyment, or, &c.] in a conveyance of land.	
The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [or cutting his grass or pulling down his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel thence, or carrying away stones from his river].	Trespass to land.
The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [or house, or mine].	Support.
The plaintiff's claim is for damages for wrongfully obstructing a way [public highway or a private way].	Way.
The plaintiff's claim is for damages for wrongfully diverting [or obstructing, or polluting, or diverting water from] a watercourse.	Water-course, &c.
The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [or into the plaintiff's mine].	
The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.	
The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture.	Pasture.
[This Form shall be sufficient whatever the nature of the right to pasture be.]	
The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.	Light.
The plaintiff's claim is for damages for the infringement of the plaintiff's right of sporting.	Sporting.
The plaintiff's claim is for damages for the infringement of the plaintiff's patent.	Patent.
The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.	Copyright.
The plaintiff's claim is for damages for wrongfully using [or imitating] the plaintiff's trade mark.	Trade mark]

RULES OF THE SUPREME COURT.

Appx. A.	The plaintiff's claim is for damages for breach of a contract to
Part III.	build a ship [or to repair a house, &c.]
s. 4.	The plaintiff's claim is for damages for breach of a contract to
—	employ the plaintiff to build a ship, &c.
Work.	The plaintiff's claim is for damages to his house, trees, crops, &c.,
Nuisance.	caused by noxious vapours from the defendant's factory [or, &c.]
	The plaintiff's claim is for damages from nuisance by noise from
	the defendant's works [or stables, or, &c.]
Innkeeper.	The plaintiff's claim is for damages for loss of the plaintiff's goods
	in the defendant's inn.
	<i>Add to Indorsement:—</i>
Mandamus.	And for a mandamus commanding the defendant to
	<i>Add to Indorsement:—</i>
Injunction.	And for an injunction to restrain the defendant from
	<i>Add to Indorsement where claim is to land, or to establish title, or</i>
	<i>both:—</i>
Mesne	And for mesne profits.
profits.	
Arrears of	And for an account of rents or arrears of rent.
rent.	
Breach of	And for breach of covenant for [repairs].
covenant.	

Appx. A.
Part III.
s. 5.

SECTION V. PROBATE.

	1.
By an executor or legatee propounding a will in solemn form.	The plaintiff claims to be executor of the last will dated the day of of C. W., late of gentleman, deceased, who died on the day of and to have the said will established. This writ is issued against you as one of the next of kin of the said deceased [or as the case may be].
By an executor or legatee of a former will, or a next of kin, &c., of the deceased seeking to obtain the revocation of a probate granted in common form.	2.
	The plaintiff claims to be executor of the last will dated the day of of C. D., late of deceased, who died on the day of, and to have the probate of a pretended will of the said deceased, dated the day of, revoked. This writ is issued against you as the executor of the said pretended will [or as the case may be].
By an executor or legatee of a will when letters of administration have been granted as in intestacy.	3.
	The plaintiff claims to be executor of the last will of C. D., late of , deceased, who died on the day of , dated the day of The plaintiff claims that the grant of letters of administration of the personal estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

APPENDIX OF FORMS.

4.

The plaintiff claims to be the brother and sole next of kin of _____, deceased, who died on the _____ intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have availed yourself of the said grant, and you are the sole next of kin of the deceased [or as the case may be].

SECTION VI.

ADMIRALTY.

1.

The plaintiffs as owners of the vessel *Mary*, of the port of _____, claim £1,000 against the brig or vessel _____ for damage occasioned by a collision, which took place in the _____ Sea in the month of May last.

2.

The plaintiffs as owners of the cargo laden on board the vessel *Mary*, of the port of _____, claim £ _____ against the vessel *Jane* for damage done to the said cargo in a collision in the _____ North Sea in the month of May last.

[The two previous forms may be combined.]

3.

The plaintiff as owner of goods laden on board the vessel _____, on a voyage from Lisbon to England, claims from the owner of the vessel _____ £ _____ for damage done to the said goods during the voyage.

4.

The plaintiff as sole owner of the vessel *Mary*, of the port of _____, claims to have possession decreed to him of the said vessel.

5.

The plaintiff claims possession of the vessel *Mary*, of the port of _____, as owner of 48-64th shares of the said vessel _____, *C. D.*, owner of 16-64th shares of the said vessel.

6.

The plaintiff as part owner of the vessel *Mary*, claims from _____, *C. D.*, part owner, and his shares in the said vessel £ _____ of the earnings of the said vessel due to plaintiff.

7.

The plaintiff as owner of 48-64th shares of the vessel *Mary*, of the port of _____, claims possession of the said brig as master thereof.

8.

The plaintiff under a mortgage, dated the _____ day of _____, claims against the vessel *Mary* £ _____ of his mortgage thereon, and £ _____ for interest.

RULES OF THE SUPREME COURT.

Appx. A.
Part III.
ss. 6, 7.

9.

The plaintiff as assignee of a bottomry bond, dated the day of _____, and granted by *C. D.* as master of the vessel *Mary*, of the port of _____, to *A. B.*, at St. Thomas's in the West Indies, claims £ _____ against the vessel *Mary* and the cargo laden thereon.

10.

By a part
owner of a
vessel.

The plaintiff as owner of 24-64th shares of the vessel *Mary*, being dissatisfied with the management of the said vessel by his co-owners, claims that his co-owners shall give him a bond in £ _____ for the value of the plaintiff's said shares in the said vessel.

11.

The plaintiffs as owners of the derelict vessel *Mary*, of the port of _____, claim to be put in possession of the said vessel and her cargo.

12.

By salvors.

The plaintiffs as the owners, master, and crew of the vessel *Caroline*, of the port of _____, claim the sum of £ _____ for salvage services performed by them to the vessel *Mary*, off the Goodwin Sands, on the day of _____.

13.

Claim for
towage.

The plaintiffs as owners of the steam-tug *Jane*, of the port of _____, claim £ _____ for towage services performed by the said steam-tug to the vessel *Mary*, on the day of _____.

14.

Seamen's
wages.

The plaintiffs as seamen on board the vessel *Mary*, claim £ _____ for wages due to them, as follows (1), the mate £30 for two months' wages from the day of _____.

15.

For neces-
saries.

The plaintiffs claim £ _____ for necessities supplied to the vessel *Mary* at the port of Newcastle-on-Tyne, delivered on the day of _____ and the day of _____.

SECTION VII.

INDORSEMENTS OF CHARACTER OF PARTIES.

Executors.

The plaintiff's claim is as executor [or administrator] of *C. D.*, deceased, for, &c.

The plaintiff's claim is against the defendant *A. B.*, as executor [or, &c.] of *C. D.*, deceased, for, &c.

The plaintiff's claim is against the defendant *A. B.*, as executor of *X. Y.*, deceased, for, &c., and against the defendant *C. D.*, in his personal capacity, for, &c.

Trustee in
bankruptcy.

The plaintiff's claim is as trustee under the bankruptcy of *A. B.*, for _____

Trustee.

The plaintiff's claim is as [or the plaintiff's claim is against the defendant as] trustee under the will of *A. B.* [or under the settlement upon the marriage of *A. B.* and *X. Y.*, his wife].

APPENDIX OF FORMS.

The plaintiff's claim is as public officer of the Bank, **Appx. A.**
for **Part III.**
The plaintiff's claim is against the defendant as public officer of **s. 7.**
the Bank, for
The plaintiff's claim is against the defendant *A. B.*, as principal, **Public**
and against the defendant *C. D.*, as public officer of the **officer.**
Bank, as surety, for
The plaintiff's claim is against the defendant as heir-at-law of **Heir and**
A. B., deceased. **devisee.**
The plaintiff's claim is against the defendant *C. D.*, as heir-at-
law, and against the defendant *E. F.*, as devisee of lands under the
will of *A. B.*
The plaintiff's claim is as well for the Queen as for himself, **Qui tam**
for **action.**

APPENDIX B.

Appx. B.
No. 1.

NOTICES, &c.

No. 1.

THIRD PARTY NOTICE.

188 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between *A. B.*, Plaintiff,
and
C. D., Defendant.

Notice filed , 188 .

To Mr. *X. Y.*

Take notice that this action has been brought by the plaintiff,
against the defendant [as surety for *M. N.*, upon a bond conditioned
for payment of 2000*l.* and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to
the extent of one-half of any sum which the plaintiff may recover
against him, on the ground that you are (his co-surety under the
said bond, or, also surety for the said *M. N.*, in respect of the said
matter, under another bond made by you in favour of the said
plaintiff, dated the day of , A.D.).

Or [as acceptor of a bill of exchange for 500*l.*, dated the
day of A.D. , drawn by you upon and accepted
by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability
under the said bill, on the ground that it was accepted for your
accommodation].

Or [as acceptor of a bill of exchange for 500*l.*, dated the
day of , A.D. , drawn by you before and accepted
by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability
under the said bill, on the ground that it was accepted for your
accommodation].

RULES OF THE SUPREME COURT.

Appx. B. Or [to recover damages for a breach of a contract for the sale and
Nos. 1—4. delivery to the plaintiff of 1000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent].

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant *C. D.*, or your liability to the defendant *C. D.*, you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing, you will be deemed to admit the validity of any judgment obtained against the defendant *C. D.*, and your own liability to contribute or indemnify to the extent herein claimed, which may be summarily enforced against you pursuant to the Rules of the Supreme Court, 1883, Order XVI., Part VI.

(Signed) *E. T.*

Or,

X. Y.,

Solicitor for the defendant,
E. T.

Appearance to be entered at

No. 2.

NOTICE OF COUNTERCLAIM.

[*Heading as in Form 1.*]

"To the within-named *X. Y.*

"Take notice that if you do not appear to the within counterclaim of the within-named *C. D.* within eight days from the service of this defence and counterclaim upon you, you will be liable to have judgment given against you in your absence.

"Appearance to be entered at

."

No. 3.

NOTICE OF PAYMENT INTO COURT.

[*Heading as in Form 1.*]

Take notice that the defendant has paid into Court £
and says that that sum is enough to satisfy the plaintiff's claim [or
the plaintiff's claim for, &c.]

To Mr. *X. Y.*,
the plaintiff's Solicitor.

Z.,
defendant's Solicitor.

No. 4.

ACCEPTANCE OF SUM PAID INTO COURT.

[*Heading as in Form 1.*]

Take notice that the plaintiff accepts the sum of £
paid by you into Court in satisfaction of the claim in respect of
which it is paid in.

APPENDIX OF FORMS.

No. 5.

Appx. B.
Nos. 5—8.

CONFESSION OF DEFENCE.

[*Heading as in Form 1.*]

The plaintiff confesses the defence stated in the paragraph of the defendant's defence [*or, of the defendant's further defence*].

No. 6.

INTERROGATORIES.

18 . [*here put the letter and number.*]

In the High Court of Justice.

Division.

Between *A. B.*, Plaintiff,
and

C. D., *E. F.* and *G. H.*, Defendants.

Interrogatories on behalf of the above-named [*plaintiff or defendant C. D.*] for the examination of the above named [*defendants E. F. and G. H.*, or *plaintiff*].

1. Did not, &c.

2. Has not, &c.

&c. &c. &c.

[*The defendant E. F. is required to answer the interrogatories numbered .*]

[*The defendant G. H. is required to answer the interrogatories numbered .*]

No. 7.

ANSWER TO INTERROGATORIES.

[*Heading as in Form 6.*]

The answer of the above-named defendant *E. F.* to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named *E. F.*, make oath and say as follows :—

No. 8.

AFFIDAVIT AS TO DOCUMENTS.

[*Heading as in Form 1.*]

I, the above-named defendant *C. D.*, make oath and say as follows :—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

RULES OF THE SUPREME COURT.

Appx. B. 2. I object to produce the said documents set forth in the second
Nos. 8—10. part of the said first schedule hereto.

3. That [*here state upon what grounds the objection is made, and verify the facts as far as may be*].

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on [*state when*].

6. That [*here state what has become of the last mentioned documents, and in whose possession they now are*].

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

No. 9.

NOTICE TO PRODUCE DOCUMENTS.

[*Heading as in Form 1.*]

Take notice that the [*plaintiff or defendant*] requires you to produce for his inspection the following documents referred to in your [*statement of claim, or defence, or affidavit, dated the day of* A.D.].

Describe documents required.

X.Y.,
Solicitor to the

To Z.,
Solicitor for

No. 10.

NOTICE TO INSPECT DOCUMENTS.

[*Heading as in Form 1.*]

Take notice that you can inspect the documents mentioned in your notice of the day of A.D. [*except the deed numbered in that notice*] at [*insert place of inspection*] on Thursday next, the inst., between the hours of 12 and 4 o'clock.

Or, that the [*plaintiff or defendant*] objects to giving you inspection of the documents mentioned in your notice of the day of , A.D. , on the ground that [*state the ground*].

APPENDIX OF FORMS.

No. 11.

Appx. B.
No. 11.

NOTICE TO ADMIT DOCUMENTS.

[*Heading as in Form 1.*]

Take notice that the plaintiff [*or defendant*] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or plaintiff*], his solicitor, [*or agent*], at _____ on _____, between the hours of _____; and the defendant [*or plaintiff*] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

(Signed)
To *E.F.*, solicitor [*or agent*] for
defendant [*or plaintiff*].

G. H., solicitor [*or agent*] for plaintiff [*or defendant*]

[*Here describe the documents, the manner of doing which may be as follows:—*]

ORIGINALS.

Description of Documents.	Dates.
Deed of covenant between <i>A.B.</i> and <i>C.D.</i> , first part, and <i>E.F.</i> second part	January 1, 1848.
Indenture of lease from <i>A.B.</i> to <i>C.D.</i>	February 1, 1848.
Indenture of release between <i>A.B.</i> , <i>C.D.</i> , first part, &c.	February 2, 1848.
Letter, defendant to plaintiff	March 1, 1848.
Policy of insurance of goods by ship <i>Isabella</i> , on voyage from Oporto to London	December 3, 1847.
Memorandum of agreement between <i>C.D.</i> , captain of said ship, and <i>E.F.</i>	January 1, 1848.
Bill of exchange for 100 <i>l.</i> at three months, drawn by <i>A.B.</i> on and accepted by <i>C.D.</i> , indorsed by <i>E.F.</i> and <i>G.H.</i>	May 1, 1849.

RULES OF THE SUPREME COURT.

Appx. B.
Nos. 11—
12.

COPIES.

Description of Documents	Dates	Original or Duplicate served, sent, or delivered, when, how, and by whom.
Register of baptism of A.B. in the parish of X.	January 1, 1848 .	Sent by General Post, February 2, 1848
Letter—plaintiff to defendant	February 1, 1848 .	
Notice to produce papers	March 1, 1848 .	Served March 2, 1848, on defendant's attorney by E.F., of —
Record of a Judgment of the Court of Queen's Bench in an action, F.S. v. F.V.	Trinity Term, 10th Vict.	
Letters Patent of King Charles II. in the Rolls Chapel . .	January 1, 1680. .	

No. 12.

NOTICE TO ADMIT FACTS.

[Heading as in Form 1.]

Take notice that the plaintiff [or defendant] in this cause requires the defendant [or plaintiff] to admit, for the purposes of this cause only, the several facts respectively hereunder specified; and the defendant [or plaintiff] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

Dated, &c.

G. D., solicitor [or agent] for the plaintiff [or defendant].
To E. F., solicitor [or agent] for the defendant [or plaintiff].

The facts, the admission of which is required, are—

1. That John Smith died on the 1st of January, 1870.
2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1876.
5. That Julius Smith never was married.

APPENDIX OF FORMS.

No. 13

ADMISSION OF FACTS, PURSUANT TO NOTICE.

Appx. B.
Nos. 13—
14.

[*Heading as in Form 1.*]

The defendant [*or plaintiff*] in this cause, for the purposes of this cause only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of such facts, or any of them, as evidence in this cause.

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant [*or plaintiff*] on any other occasion, or by anyone other than the plaintiff [*or defendant or party requiring the admission*].

Delivered, &c.

E. F., solicitor [*or agent*] for the defendant [*or plaintiff*].
To *G. H.*, solicitor [*or agent*] for the plaintiff [*or defendant*].

Facts admitted.	Qualifications or limitations, if any, subject to which they are admitted.
1. That John Smith died on the 1st of January, 1870.	
2. That he died intestate.	2.
3. That James Smith was his lawful son.	3. But not that he was his only lawful son.
4. That Julius Smith died.	4. But not that he died on the 1st of April, 1876.
5. That Julius Smith never was married.	5.

No. 14.

NOTICE TO PRODUCE (GENERAL FORM).

[*Heading as in Form 1.*]

Take notice, that you are hereby required to produce and show to the Court on the trial of this all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this , and particularly

Dated the day of 18 .

To the above-named

h solicitor [*or agent*] { (Signed) of agent for solici-
tor for the above-named

RULES OF THE SUPREME COURT.

Appx. B.
Nos. 15—
18.

No. 15.

ISSUE.

[*Heading as in Form 1.*]

Whereas *A. B.* affirms, and *C. D.* denies [*here state the question or questions of fact to be tried*], and it has been ordered by the Hon. Mr. Justice that the said question shall be tried [*here state mode of trial, whether with or without a jury*], therefore let the same be tried accordingly.

No. 16.

NOTICE OF TRIAL.

[*Heading as in Form 1.*]

Take notice of trial of this [or of the issues in this
ordered to be tried] [or as the case may be] in
[or as the case may be], for the day of next.
X. Y., plaintiff's solicitor [or as the case may be].

Dated

To *Z.*, defendant's solicitor [or as the case may be].

No. 17.

CERTIFICATE OF OFFICER AFTER TRIAL WITH A JURY.

[*Heading as in Form 1.*]

I certify that this was tried before the Honourable Mr. Justice with a special jury of the county of , on the 12th and 13th days of November, 1876.

The jury found [*state findings*].

The judge directed that judgment should be entered for the plaintiff for l. with costs of summons [or as the case may be].

A. B.,

[*Title of officer.*]

The day of , 18 .

No. 18.

NOTICE OF MOTION.

[*Heading as in Form 1.*]

Take notice, that the Court will be moved on
day the day of , 18 , at
o'clock in the forenoon, or so soon thereafter as counsel
can be heard, by that

Dated the day of , 18 .

(Signed)

of

agent for

solicitor for the

To

APPENDIX OF FORMS.

No. 19.

NOTICE OF DISCONTINUANCE.

[Heading as in Form 1.]

Take notice, that the plaintiff hereby*

Dated the day of 18 .

(Signed)

of

agent for

solicitor for the plaintiff.

To

No. 20.

NOTICE OF CROSS-EXAMINATION OF DEPONENTS A

[Heading as in Form 1.]

Take notice, that the intend at the
action to cross-examine the several deponents named a
in the schedule hereto on their affidavits therein specifi

And also take notice that you are hereby required to
said deponents for such cross-examination before the Cou

Dated the day of 18 .

(Signed)

agent for

of

solicitor for the

To

THE SCHEDULE above referred to.

Name of Deponent.	Address and Description.	Date when Aff

No. 21.

NOTICE OF RENEWAL OF WRIT OF EXECUTION.

[Heading as in Form 1.]

Take notice, that the writ of issued in t
directed to the sheriff of , and bearing date t
day of , 18 , has been renewed for

from the day of , 18 .

Dated the day of , 18 .

(Signed)

of

agent for

solicitor for the

To the sheriff of

RULES OF THE SUPREME COURT.

Appx. B.
Nos. 22—
24.

No. 22.

NOTICE AS TO STOCK UNDER ORDER XLVI.

To the [*here add the name of the company*].

Take notice that the stock comprised in and now subject to the trusts of the [*settlement, will, &c.*] referred to in the affidavit to which this notice is annexed consists of the following (that is to say) [*here specify the stock*].

This notice is intended to stop the transfer of the stock only, and not the receipt of dividends [*or, the receipt of the dividends on the stock as well as the transfer of the stock*].

(Signed)

A. B.

No. 23.

AFFIDAVIT OF SERVICE OF SUMMONS.

[*Heading as in Form 1.*]

I, _____, of _____, solicitor for the above-named _____, make oath and say as follows:—

I did on the _____ day of _____, 18____, before the hour of _____ in the _____ noon, serve the above-named _____ in this action, with a true copy duly stamped of the summons hereto annexed marked A, by leaving it at the _____ of the said _____ situate with _____ there

Sworn at

this _____ day of _____, 18____.

Before me

This affidavit is filed on behalf of the

No. 24.

AFFIDAVIT ON REGISTRATION OF BILL OF SALE.

In the High Court of Justice.

Division.

18____ No. ____.

I, _____ of _____, make oath and say as follows:—

1. The paper writing hereto annexed and marked A is a true copy of a bill of sale, and of every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof, as made and given and executed by

2. The said bill of sale was made and given by the said _____ on the _____ day of _____, 18____.

3. I was present and saw the said _____ duly execute the said bill of sale on the said _____ day of _____, 18____.

4. The said _____ resides at [*state residence at time of swearing affidavit*] and is [*state occupation*].

5. The name _____ subscribed to the said bill of sale as that of the witness attesting the due execution thereof is in the proper handwriting of me this deponent.

6. I am a solicitor of the Supreme Court, and reside at _____.

7. Before the execution of the said bill of sale by the said _____ I fully explained to _____ the nature and effect thereof.

Sworn, &c.

APPENDIX OF FORMS.

No. 25.

Appx. B.
Nos. 25—
27.

AFFIDAVIT IN SUPPORT OF GARNISHEE ORDER.

In the High Court of Justice.

Division.

Between

18 . No. .

, Judgment Creditor,
and

, Judgment Debtor.

I, , of , the above-named judgment creditor [or solicitor for the above-named judgment creditor] make oath and say as follows :—

1. By a judgment of the Court given in this action, and dated the day of , 18 , it was adjudged that I [or the above-named judgment creditor] should recover against the above-named judgment debtor the sum of £ , and costs to be taxed, and the said costs were by a master's certificate, dated the day of , 18 , allowed at £ .

2. The said still remains unsatisfied to the extent of and interest amounting to £ .

3. * is indebted to the judgment debtor in the sum of £ or thereabouts.

* Name
address, and
description
of garnishee

4. The said is within the jurisdiction of this Court.
Sworn, &c.

No. 26.

AFFIDAVIT ON INTERPLEADER.

[Heading as in Form 1.]

I, of the defendant in the above action, make oath and say as follows :—

1. The writ of summons herein was issued on the day of , 18 , and was served on me on the day of , 18 .

2. The action is brought to recover

The said * in my possession, but I claim no interest therein. * "is" or "are."

3. The right to the said subject-matter of this action has been and is claimed† by one who ‡ † If claim in writing make the writing an exhibit.

4. I do not in any manner collude with the said or with the above-named plaintiff, but I am ready to bring into Court or to pay or dispose of the said ‡ State expectation of suit, or that he has already sued.
in such manner as the Court may order or direct.
Sworn, &c.

No. 27.

AFFIDAVIT AS TO STOCK UNDER ORDER XLVI.

In the matter of [here state the nature of the document comprising the stock, and add the date and other particulars, so far as known to the deponent, sufficiently to identify the document];

and

In the matter of the Act of Parliament, 5 Vict. c. 5.

I, , of , make oath and say

RULES OF THE SUPREME COURT.

Appx. B. that according to the best of my knowledge, information, and belief,
No. 27. I am [or, if the affidavit is made by the solicitor, A.B., of
is] beneficially interested in the stock comprised in the [settlement,
will, &c.] above mentioned, which stock, according to the best of my
knowledge and belief, now consists of the stock specified in the
notice hereto annexed.
This affidavit is filed on behalf of A. B., whose address is [state
address for service].

Appx. C.
ss. 1, 2
No. 1.

APPENDIX C.

FORMS OF STATEMENTS OF CLAIM TO BE USED PURSUANT TO
ORDER XIX., RULE 5.

SECTION I.

18 . [Here put letter and number.]

General. In the High Court of Justice.
Division.
Writ issued the of , 18 .
Between A. B., Plaintiff,
and
C. D., Defendant.

Statement of claim.

The plaintiff, &c.
[or]
The plaintiff's claim is, &c.
[To be filled up in manner exemplified in the following forms].
The plaintiff claims [as in following forms.]
Place of trial
(Signed)
Delivered the of , 18 .

SECTION II.

ACTIONS SPECIALLY ASSIGNED TO THE CHANCERY DIVISION BY s. 35,
SUB-S. 3, OF THE PRINCIPAL ACT.

No. 1.

Adminis- The plaintiff is a creditor of X. Y., deceased, of whom the defen-
tration. dant C. D. is executor [or administrator] and the defendant E. F. is
heir-at-law [or devisee].
Particulars of the claim :
Principal due on the bond of the testator [or intestate], dated
the of , 18 . £2000 0 0
Interest from the of at 5 per
cent. 250 0 0
£2250 0 0
324

APPENDIX OF FORMS.

The plaintiff claims to be paid the amount due to him, or to have the real and personal estate of the said X. Y. administered.

(Signed)

Delivered

Appx. C.

s. 2.

Nos 1—4.

No. 2.

1. The plaintiff is residuary legatee of A. B., of the city of Bath, who died March 3rd, 1882, having made his will dated March 2nd, 1882, and appointed the defendants his executors, who proved his will April 6th, 1882. Wilful default.

2. The defendants have been guilty of wilful default in not getting in certain property of the testator.

3. The wilful default on which the plaintiff relies is as follows :—

C. D. owed to the testator 1000/., in respect of which no interest had been paid or acknowledgment given for five years before the testator's death. The defendants were aware of this fact, but never applied to C. D. for payment until more than a year after testator's death, whereby the said sum was lost.

The plaintiff claims :—

1. Account of testator's personal estate on footing of wilful default.

2. Administration of the testator's personal estate.

(Signed)

Delivered

No. 3.

1. The plaintiff on December 20th, 1875, entered into partnership articles with the defendant for 10 years. Dissolution of partnership.

2. The defendant has broken the partnership articles as follows :—

a.

b.

c.

The plaintiff claims :—

1. Dissolution.

2. Accounts and inquiries.

3. A receiver and manager.

(Signed)

Delivered

No. 4.

1. The plaintiffs are executors of A., deceased.

2. From the year 1875 till his death A. employed the defendant as his confidential agent in the management of a large building estate at X. For accounts

3. The defendant as such agent received large sums of money for the said A., for which he refuses to account.

The plaintiffs claim :—

1. Accounts of all sums received and paid by the defendant as agent of A.

2. Payment of the amount found due.

(Signed)

Delivered

RULES OF THE SUPREME COURT.

Appx. C.

s. 2.

Nos. 5—7.

Foreclosure
or sale.

No. 5.

1. The plaintiff is mortgagee of lands belonging to the defendant.
 2. The following are the particulars of the mortgage :—
 - a. (*Date and names of mortgagor and mortgagee*).
 - b. (*Sum secured*).
 - c. (*Rate of interest*).
 - d. (*Property subject to mortgage*).
 - e. (*Amount now due*).

(*If the plaintiff's title is a derivative title, state shortly the assignments under which he claims*).

(*If the plaintiff is mortgagee in possession add*) :
 3. The plaintiff took possession of the mortgaged property on the _____ of _____, and is ready to account as mortgagee in possession from that time.
- The plaintiff claims payment, or, in default, sale, or foreclosure [and possession].

(Signed)

Delivered

No. 6.

Redemp-
tion.

1. The plaintiff is mortgagor of lands, of which the defendant is mortgagee.
 2. The following are the particulars of the mortgage :—
 - a. (*Date*).
 - b. (*Sum secured*).
 - c. (*Rate of interest*).
 - d. (*Property subject to mortgage*).

(*If the plaintiff's title is derivative, state shortly the deeds under which he claims*).

(*If the defendant is mortgagee in possession add*) :
 3. The defendant has taken possession [or has received the rents] of the mortgaged property.
- The plaintiff claims to redeem the said premises, and to have the same reconveyed to him [and to have possession thereof].

(Signed)

Delivered

No. 7.

For raising
portions or
other
charges on

1. By a settlement on the marriage of A. B. and C. B., dated January 10, 1850, Whiteacre was demised to trustees for 1000 years on trust after the deaths of A. B. and C. B. to raise 5000*l.* for the younger children of the marriage who should attain twenty-one.
 2. A. B. died February 15, 1870.
 3. C. B. died June 10, 1875.
 4. There were five children only of the marriage of A. B. and C. B., all of whom are now living and have attained twenty-one. The plaintiff is the second born child.
 5. The defendants were on April 5, 1877, appointed trustees of the settlement.
- The plaintiff claims :
1. To have 5000*l.* raised by sale or mortgage and distributed among the persons entitled.

(Signed)

Delivered

APPENDIX OF FORMS.

No. 8.

1. On November 12, 1880, *A.* and the defendant *B.* deposited with the plaintiff 500 Russian Government bonds as security for a debt of 1000*l.* and interest at 4 per cent. due from *A.* and the defendant *B.* to the plaintiff.

Appx. C.
s. 2.
Nos. 8—
10.

2. *A.* died March 12, 1881.

3. On March 30, 1881, administration of the estate of *A.* was granted to the defendant *C.*

4. 800*l.* and 30*l.* for interest is owing to the plaintiff on the security of the said bonds.

Sale and distribution of proceeds of property subject to any lien or charge.

The plaintiff claims :

1. Sale of the said bonds.
2. Application of the proceeds in payment of his debt.
3. Distribution of the surplus among the parties entitled.

(Signed)

Delivered

No. 9.

1. By a settlement dated July 3, 1872, on the marriage of the Breach of plaintiffs' father and mother, of which the defendant *A. B.* and one trust. *C. D.* were trustees, the plaintiffs are absolutely entitled on the deaths of their father and mother.

2. On August 5, 1874, *C. D.* died, and the defendant *E. F.* was appointed in his place.

3. On December 1, 1879, the plaintiffs' father died.

4. On January 1, 1880, the plaintiffs' mother died.

5. The defendants have committed the following breaches of trust by :

(a.) Sale of 3000*l.* Bank Stock and investment of the proceeds in the business of the defendant *A. B.*

b. Sale of leasehold property worth 5000*l.* to *G. H.* for 1000*l.* [without taking any proper steps to ascertain its value or to obtain such value].

The plaintiffs claim :

1. The replacement of 3000*l.* Bank Stock and 5*l.* per cent. interest on the proceeds of the Bank Stock sold from the date of sale till replacement.

2. Payment of 4000*l.* and interest at 5 per cent. per annum from the date of the sale.

(Signed)

Delivered

No. 10.

1. By a settlement dated June 10, 1856, upon trust for *A. B.* and *C. B.* successively for life, with remainder for their children who should attain twenty-one, the following property was assured :—

Execution of trust.

a. A sum of 5735*l.* 14*s.* 2*d.* consolidated 3*l.* per cent. annuities.

b. 4000*l.* invested on mortgage of land at *X.*

c. One-fifth of the residuary estate of *D.* deceased, subject to a prior life interest.

2. On August, 15, 1862, *C. B.* died.

3. On February 18, 1875, *A. B.* died.

RULES OF THE SUPREME COURT.

- Appx. C.** 4. On September 10, 1879, *D.* died.
a. 2. 5. *A. B.* and *C. B.* had five children only, of whom the plaintiff
Nos. 10— is one.
12. 6. The defendants are the present trustees of the settlement.
 The plaintiff claims :
 1. Execution of the trusts of the settlement.
 2. All necessary accounts and inquiries.
 3. A receiver.

(Signed)
Delivered

No. 11.

- For rectifi- 1. In 1865 a marriage was arranged between *A. B.* and the
 cation, &c , plaintiff.
 of instru- 2. By an agreement contained in two letters, dated February 10
 ments. and 12, 1865, it was agreed between *C. B.*, the father of *A. B.*, and
D., the father of the plaintiff, that each should settle 10,000*l.* on
 trust for *A. B.* and the plaintiff successively for life, with remainder
 on the usual trusts for the children of the marriage.
 3. By letter, dated March 7, 1865, from *D.* to Messrs. *E. & G.*,
 his solicitors, he instructed them to prepare a settlement.
 4. A settlement, dated April 25, 1865, was executed upon the
 marriage of *A. B.* and the plaintiff, accidentally omitting to give a
 life interest to the plaintiff after the life interest of *A. B.*
 5. On May 20, 1882, *A. B.* died.
 6. The defendants *H.* and *K.* are the present trustees of the
 settlement.
 7. The defendants *L. M.* and *N.*, are the only children of the
 marriage.
 The plaintiff claims :
 Rectification of the settlement.

(Signed)
Delivered

No. 12.

- Specific per- 1. By an agreement [*or letters*] dated [*or made verbally at inter-*
 formance. views on or about] the day , the plaintiff
 agreed to sell to the defendant the Home Farm, Kent, for
 £ . The sale was to be completed on the
 of .
 (*If the agreement was verbal, add—*)
 2. The agreement so entered into has been part performed as
 follows [*state how*].
 The plaintiff claims specific performance of the above agreement
 and that the defendant may be ordered to execute a proper con-
 veyance of the premises to the plaintiff (*stating in each case what the*
defendant is required specifically to do).

(Signed)
Delivered

APPENDIX OF FORMS.

No. 13.

1. By will, dated January 5, 1864, *A.* devised Whiteacre to *C.*, and *D.* as tenants in common.
 2. On March 10, 1865, *A.* died.
 3. On March 20, 1865, *A.*'s will was proved.
 4. On June 25, 1867, *B.* conveyed to the plaintiff his share of Whiteacre.
 5. On July 30, 1869, *C.* conveyed his share to the defendant on trust for sale.
 6. By will, dated November 5, 1872, *D.* devised his share of Whiteacre to his children equally.
 7. On December 2, 1872, *D.* died.
 8. On December 15, 1872, *D.*'s will was proved.
 9. There were ten children of *D.* living at his decease, of whom five have since died.
 - [10. Whiteacre consists of a mansion, house, and grounds.]
 11. A sale of the property and a division of the proceeds would be more beneficial than a division of the property.]
- The plaintiff claims :
A division of Whiteacre among the parties interested.
[Or a sale of Whiteacre and distribution of the proceeds among the parties interested.]

(Signed)
Delivered

No. 14.

1. By will, dated August 10, 1882, *A.* devised Whiteacre to the plaintiff for life, and 10,000*l.* to defendant on trust for plaintiff.
 2. On August 15, 1882, *A.* died.
 3. On August 30, 1882, probate was granted to the defendant as the sole executor.
 4. The plaintiff is an infant twelve years old.
- The plaintiff claims :
1. That the plaintiff may become a ward of Court.
2. Administration of the trusts of the will of *A.* so far as may be necessary.

(Signed)
Delivered

SECTION III.

ACTIONS WITHIN THE EXCLUSIVE COGNIZANCE OF THE PLAINTIFF IN THE DIVORCE AND ADMIRALTY DIVISION. SECTION 34 OF THE PRINCIPAL ACT.

No. 1.

- The plaintiff is cousin-germain and one of the next of kin of the late of No. 1, High Street, Putney, in the county of Surrey, who died on or about the 1st of March, 1883, a widower without child, parent, brother, or sister, uncle or aunt, nephew or niece.
- The plaintiff claims :
A grant to him of letters of administration of the personal estate and effects of the said deceased.

(Signed)
Delivered

RULES OF THE SUPREME COURT.

Appx. C.

s. 8.

Nos. 2—5.

Probate of
will in
solemn
form.

No. 2.

The plaintiff is the executor appointed under the will of C. T. late of Bicester, in the county of Oxford, gentleman, who died on the 20th of January, 1883, the said will bearing date the 1st of January, 1875, and a codicil thereto, the 1st of October, 1875.

The plaintiff claims :

That the Court shall decree probate of the said will and codicil in solemn form of law.

(Signed)
Delivered

No. 3.

Bottomry.

1. A bond, dated the 13th of October, 1883, was executed by the master of the ship *Onward* at Mauritius, binding the said ship and her cargo, viz., 940 tons of teak timber, and her freight, for payment unto Messrs. H. and Co., their assigns, order, or indorseees, of 24,000 dollars, Mauritius currency, with maritime premium at the rate of 128 dollars for every 100 dollars, within twenty days next after the arrival of the said ship at her port of discharge: payment to be made both of capital and interest in British sterling money at the rate of four shillings for every dollar.

2. The plaintiffs are assignees of the said bond from the said Messrs. H. and Co.

The plaintiffs claim :

1. That the Court pronounce for the validity of the bond.
2. Condemnation of the defendants and their bail in the sum of l.

(Signed)
Delivered

No. 4.

Equipment
and neces-
saries.

The plaintiff supplied necessaries and equipment and did repair to the vessel *The Ellen* in the months of February and March, 1883, at the port of London, on the order of Messrs. K. L., who were duly authorised in that behalf; the said vessel being a British Colonial vessel, belonging to the port of Digby in Nova Scotia, and having no owner or part owner who was at the time of the commencement of this action, or is, domiciled in England or Wales.

The plaintiff claims :

1. 305*l.* 3*s.*, with interest thereon at 5 per cent. per annum from the 19th of February, 1883, until judgment.
2. The condemnation of the defendant and his bail in the said sum.

(Signed)
Delivered

No. 5.

Possession.

The plaintiff is owner of 32-64th parts or shares, and master, of the vessel *Lady of the Lake*, and the defendant, who is owner of the remaining 32-64th parts, withheld possession of the said vessel from the plaintiff.

APPENDIX OF FORMS.

The plaintiff claims :
1. Possession of the said vessel.
2. The condemnation of the defendant in all losses and damages occasioned by the defendant's withholding possession of the vessel from the plaintiff.

Appx. C.
s. 3.
Nos. 5, 6.

(Signed)
Delivered

No. 6.

The plaintiffs are the owners, master, and crew of the steamship *Salvage Brazilian*, of the port of Newcastle, of the burthen of 1300 tons gross registered tonnage, and rendered salvage services to the steamship *Campanil* off the coast of Portugal, on or about the 26th and 27th of December, 1882.

Particulars :—	£
1. Value of <i>Campanil</i> at the time of the services	13,000
Value of cargo	300
Freight	675
2. Value of <i>Brazilian</i> , her freight and cargo .	2,050
3. Damage sustained by <i>Brazilian</i>	150
Extra coal consumed	16
Paid for harbour dues, &c., at Vigo . . .	4

The plaintiffs claim :
Such amount of salvage as may be just.

(Signed)
Delivered

SECTION IV.

ACTIONS INCLUDED IN ORDER III., RULE 6, CLASSES A, B, C, D, E, AND F.

Appx C.
s. 4.
No. 1.

No. 1.

The plaintiff's claim is for the price of goods sold and delivered.
Particulars :—

Goods sold
and deli-
vered.

	£	s.	d.
1881—31st December.—			
Balance of account for butcher's meat to this date	35	10	0
1882—1st January to 31st March.—			
Butcher's meat	74	5	0
	109	15	0
1882—1st February.—Paid	45	0	0
Balance due	£64	15	0

Place of trial, London.

(Signed)
Delivered.

RULES OF THE SUPREME COURT.

Appx. C.
s. 4.
No. 2—5.

No. 2.

The plaintiff's claim is for money received by the defendant in the use of the plaintiff.

Money had
and re-
ceived

Particulars :—

£ s. d.

1882.—1st January.—

To amount of rents of No. 5, Smith Street, col-
lected by the defendant

. 72 10 0

To deposit on intended sale of Eva Villa

. 100 0 0

Amount due £172 10 0

Place of trial, London.

(Signed)
Delivered

No. 3.

Payee
against
maker of a
promissory
note.

The plaintiff's claim is against the defendant, as maker of a promissory note for 250*l.* dated 1st January, 1882, payable four months after date.

Particulars :—

£

Principal 250

Interest 10

Amount due £260

Place of trial, Lancashire, West Derby Division.

(Signed)
Delivered

No. 4.

Indorsee
against ac-
ceptor of a
bill of
exchange.

The plaintiff's claim is against the defendant, as acceptor of a bill of exchange for 400*l.*, dated 1st January, 1882, drawn by *A. B.* payable three months after date to the order of *E. F.*, and indorsed to the plaintiff.

Particulars :—

£

Principal due 400

Interest 16

Amount due £416

(Signed)
Delivered

No. 5.

Indorsee
against ac-
ceptor and
drawer of a
bill of
exchange
severally.

The plaintiff's claim is against the defendant *A. B.* as acceptor, and against the defendant *C. D.* as drawer, of a bill of exchange for 500*l.*, dated 1st January, 1882, payable three months after date, and indorsed by the defendant *C. D.* to the plaintiff, of the dishonour of which on presentation the defendant *C. D.* had notice.

APPENDIX OF FORMS.

Particulars :—

					£
Principal	.	.	.	.	500
Interest	.	.	.	.	20
					<hr/>
Amount due	.	.	.	.	£520
					<hr/>

Appx. C.
s. 4
Nos. 5—8.

Place of trial, city of Bristol.

(Signed)
Delivered

No. 6.

The plaintiff's claim is against the defendant as a drawer of a bill of exchange for 600*l.* dated 1st March, 1882, drawn upon *A. B.*, payable to plaintiff three months after date, which was duly presented for payment and dishonoured, but *A. B.* had no effects of the defendant nor was there any consideration for the payment of the said bill by the said *A. B.*

Payee
against
drawer of a
bill of
exchange
excusing
notice of
dishonour.

Particulars (as in Form 4).

Place of trial

(Signed)
Delivered.

No. 7.

The plaintiff's claim is for principal and interest due upon the defendant's bond to the plaintiff, dated 1st January, 1873, conditioned for payment of 100*l.* on the 26th December, 1873.

Obligee
against
obligor of a
money
bond.

Particulars :—

					£
Principal	.	.	.	.	50
Interest	.	.	.	.	2
					<hr/>
Amount due	.	.	.	.	£52
					<hr/>

Place of trial, Surrey.

(Signed)
Delivered

No .8.

The plaintiff's claim is for principal and interest due under a covenant in a deed dated 1st of January, 1882.

Covenantee
against
covenantor
on a cove-
nant to
pay money.

Particulars :—

					£
Principal	.	.	.	.	100
Paid	.	.	.	.	20
					<hr/>
Principal due	.	.	.	.	80
Interest	.	.	.	.	3
					<hr/>
Amount due	.	.	.	.	£83
					<hr/>

Place of trial, London.

(Signed)
Delivered

RULES OF THE SUPREME COURT.

Appx. C.
s. 4.
Nos. 9—11.

Against
shareholder
for allot-
ment
money and
calls by a
company
under 25 &
26 Vict.
c. 89.

No. 9.

The plaintiff's claim is for money in which the defendant, as a member of the company, is indebted to the plaintiffs (being a company incorporated under the Companies Act, 1862) for allotment of money of _____ per share on _____ shares in the company allotted to the defendant, as such member, at his request and for _____ calls of £ _____ each upon _____ shares in the company of which the defendant is a holder, whereby an action has accrued to the plaintiffs.

Particulars :—

18	—Allotment of	shares to the
	defendant at £	per share . £
18	—(1st) call at £	per share . £
	(2nd) call at £	per share . £

Amount due	£
------------	---	---	---	---	---	---

Place of trial, .

(Signed)
Delivered

No. 10.

On a
guarantee
for the
price of
goods set-
ting out the
guarantee.

The plaintiff's claim is for the price of goods sold and delivered by the plaintiff to E. F. under the following guarantee :—

SIR,

2nd February, 1882.

In consideration of your supplying goods to E. F., I undertake to see you paid.

Yours, &c.,

To Mr. A. B. (plaintiff).

C. D. (defendant).

Particulars :—

1882.

25 March, 55 tons of coal at 20s.	.	.	.	£55	0	0
-----------------------------------	---	---	---	-----	---	---

Amount due	£55	0	0
------------	---	---	---	---	---	-----	---	---

Place of trial, .

(Signed)
Delivered

No. 11.

Creditor
against
principal
debtor and
his surety
severally on
a guarantee
for goods
sold.

The plaintiff's claim is against the defendant A. B. as principal and against the defendant C. D. as surety, for the price of goods sold and delivered by the plaintiff to A. B. on the guarantee by C. D. dated the 2nd of February, 1882.

Particulars :—

		£	s.	d.
2nd February—Goods	.	47	15	0
3rd March—Goods	.	105	14	0
17th March—Goods	.	14	12	0
5th April—Goods	.	34	0	0

Amount due	.	.	.	£202	1	0
------------	---	---	---	------	---	---

Place of trial, Surrey.

(Signed)
Delivered

APPENDIX OF FORMS.

No. 12.

The plaintiff's claim is against the defendants as trustees under the settlement upon the marriage of *A. B.* and *X. Y.*, dated January 1st, 1870, whereby £10,000 invested on mortgage of land at *Z.* was vested in the defendants as trustees upon trust to pay the income thereof half-yearly to the plaintiff.

Particulars:—

£

1882. December 25th, half a year's income . 200

Appx. C.
s. 4.
No. 12.

Debt upon a trust.

No. 13.

See Sect. VII. Form No. 1.

Landlord
against
tenant
whose term
has expired
or has been
determined
by notice to
quit.

SECTION V.

ACTIONS FOR DAMAGES FOR BREACH OF CONTRACT OR DUTY ARISING OUT OF CONTRACT.

Appx. C.
s. 5.
Nos. 1, 2.

No. 1.

1. The plaintiff has suffered damage by breach of contract for sale and delivery by the defendant to the plaintiff of 100 tons of Scotch pig iron at 5*l.* per ton, to be delivered on Rail at Middlesborough on the 15th of March, 1882.

Buyer
against
seller of
goods for
not deliver-
ing.

2. The defendant did not deliver any [or tons, as the case may be] of the said iron.

Particulars of damage:—

£

Loss of profit at 1*l.* per ton on 100 tons . 100

The plaintiff claims 100*l.*

Place of trial, London.

(Signed)
Delivered

No. 2.

1. The plaintiff has suffered damage by breach of a contract between the plaintiff and the defendant for sale and delivery of 100 sacks of flour known as seconds at 35*s.* per sack.

Buyer
against
seller of
goods for
delivering
them infe-
rior to
contract.

2. 80 sacks delivered were inferior to seconds, and 20 sacks were not delivered.

Particulars of damage:—

£

80 sacks at 4 <i>s.</i>	.	.	.	.	16
20 sacks at 5 <i>s.</i>	.	.	.	.	5
					£21

The plaintiff claims 21*l.*

Place of trial, Surrey.

(Signed)
Delivered

RULES OF THE SUPREME COURT.

Appx. C.
a. 5.
Nos. 3—6.

No. 3.

Shipowner
against
charterer
for deten-
tion beyond
the demur-
rage days.

1. The plaintiff has suffered damage by breach of a charter-party dated the 10th of March, 1882, between the plaintiff and the defendant, of the ship *Mary*.

2. The ship was detained at the port of loading.

Particulars of damage :—

1882. Jan. 1	{ 10 days' detention beyond the	£
to Jan. 10		
	demurrage days at 25l. per day	250

The plaintiff claims 250l.

Place of trial, London.

(Signed)
Delivered

No. 4.

Shipper
against
master on a
bill of
lading for
damage to
goods.

1. The plaintiff has suffered damage by breach of contract by the defendant of lading of goods shipped by the plaintiff on board the *Jane* signed by defendant, dated the 1st of January, 1882.

2. 50 bales of cotton were delivered in a damaged condition.

Particulars of damage :—

50 bales at 2l.	.	.	.	£
				100

The plaintiff claims 100l.

Place of trial, city of Bristol.

(Signed)
Delivered

No. 5.

Shipper
against
shipowner
on a bill of
lading for
damage and
short de-
livery.

1. The plaintiff has suffered damage by breach of contract by the defendant of lading of goods shipped by the plaintiff, signed by the master of the ship *Mary* as the defendant's agent, dated the 1st of January, 1882.

2. 50 quarters of wheat were delivered in a damaged condition and 100 quarters were not delivered.

Particulars of damage :—

100 quarters at 40s.	.	.	.	£
50 quarters at 4s.	.	.	.	10
				£210

The plaintiff claims 210l.

Place of trial, Lancashire, West Derby Division.

(Signed)
Delivered

No. 6.

On a
marine
policy
against un-
derwriter.

The plaintiff was interested to the amount of £ under a marine policy of insurance for that amount, dated the day of 18 , on the ship *Hero*, subscribed by the defendant for £ .

APPENDIX OF FORMS.

Particulars :—

Appx. C.

s. 5.

Nos. 6—9.

1. Valued or open :—Valued at 20,000*l*.

2. Voyage :—At and from Cardiff to Valparaiso.

3. [Or, Time :—From noon of 1st January, 1882, to noon of 1st January, 1883.]

4. Premium to defendant :—£ per cent.

5. Perils insured against causing loss :—Of the seas.

6. Loss :—Total [or exceeding 3 per cent.]

The plaintiff claims £

Place of trial, Bristol.

(Signed)

Delivered

No. 7.

The plaintiff has suffered damage from the defendants' negligence in carrying the plaintiff as a passenger by railway from London to Brighton, causing personal injuries to the plaintiff, in a collision near Hayward's Heath on the 15th January, 1882.

Passenger
against
railway
company
for negli-
gence.

Particulars of expenses, &c. :—

	£	s.	d.
Loss of 15 weeks' salary as clerk at 2 <i>l</i> . per week	30	0	0
Dr. Smith	10	10	0
Nurse for 6 weeks	3	0	0
	£43	10	0

The plaintiff claims 500*l*.

Place of trial, Sussex.

(Signed)

Delivered

No. 8.

1. The plaintiff has suffered damage from the defendant's negligence in his conduct for the plaintiff, as his solicitor, of business undertaken by the defendant on the plaintiff's retainer.

Client
against
solicitor for
negligence.

2. The negligence was in making an application under Order XIV., Rule 1, in the case of *A. B.* (the plaintiff) v. *C. D.*, where the case was one of unliquidated damages and not of debt.

Particulars of damage :—

Taxed costs paid to defendant on dismissal of summons £

The plaintiff claims £

Place of trial.

(Signed)

Delivered

No. 9.

1. By a repairing covenant contained in a lease under seal from the plaintiff to the defendant, dated the 1st of January, 1876, of a house, No. 401, Piccadilly, for seven years from the 25th day of December, 1875, the defendant covenanted to keep the premises in such repair and condition as therein mentioned.

Landlord
against
tenant for
breach of
covenant to
repair.

RULES OF THE SUPREME COURT.

- Appx. C.** 2. The premises were during the term out of such repair as was
s. 5. required by the covenant.
Nos. 9, 10. 3. They were yielded up out of such repair at the expiration of
the term.
4. Particulars of dilapidations were delivered to the defendant's
solicitor on the _____ day of _____, 18____, and exceed
three folios.
The plaintiff claims £ _____
Place of trial, _____
(Signed) _____
Delivered _____

No. 10.

Breach of
promise of
marriage.

1. The plaintiff has suffered damage by breach of promise by the
defendant to marry her on the _____ of _____
within a reasonable time, which elapsed before action] [or, on the
death of A. B., which happened before action].
2. The defendant refused to marry the plaintiff on the
of _____ [or, within a reasonable time] [or, on the death of
A. B.]

Particulars of special damage.
[As the case may be, if any.]
The plaintiff claims £ _____
Place of trial, _____
(Signed) _____
Delivered _____

Appx. C.
s. 6.

SECTION VI.

Nos. 1, 2. ACTIONS CLAIMING INJUNCTIONS, DAMAGES, OR DECLARATIONS
RIGHT FOUNDED ON WRONGS.

No. 1.

Conversion
of goods.

The plaintiff has suffered damage by the defendant wrongfully
depriving the plaintiff of two casks of oil by refusing to give them
up on demand [or, throwing them overboard out of a boat in the
London Docks, &c.].

[If any special damage is claimed, add]—

Particulars [fill them in].
The plaintiff claims 100l.
Place of trial, London.

(Signed) _____
Delivered _____

No. 2.

Detinue.

The defendant detained from the plaintiff the plaintiff's goods
and chattels, that is to say, a horse, harness, and gig.

The plaintiff claims a return of the said goods and chattels or
their value, and 10l. for their detention.

Place of trial, Lincolnshire.

(Signed) _____
Delivered _____

APPENDIX OF FORMS.

No. 3.

Appx. C.

s. 6.

Nos. 3—6.

The plaintiff has suffered damage from personal injuries to the plaintiff and damages to his carriage, caused by the defendant or his servant on the 15th of January, 1882, negligently driving a cart and horse in Fleet Street.

Negligent driving.

Particulars of expenses, &c. :—

	£	s.	d.
Charges of Mr. Smith, surgeon	10	10	0
Charges of Mr. Jones, coachmaker	14	5	6
	£24	15	6

The plaintiff claims 150*l*.

Place of trial, London.

(Signed)

Delivered

No. 4.

The plaintiff, as executor of *C. D.*, deceased, brings this action for the benefit of Eva, the wife, and William and Margaret and Dorothea, the children of *C. D.* [*as the case may be*], who have suffered damage from the defendant's negligence, in carrying the said *C. D.* by omnibus, whereby the said *C. D.* was killed in Cornhill on the 15th of January, 1882.

Lord Campbell's Act.

Particulars pursuant to Statute are delivered herewith.

The plaintiff claims 500*l*.

Place of trial, London.

(Signed)

Delivered

No. 5.

The plaintiff has suffered damage from injuries to his ship, the *Betsy*, and the cargo on board thereof, by a collision with the ship the *Jane*, caused by the negligent navigation thereof by the defendant or his servants on the river Thames on the 1st of February, 1883.

Collision of ships.

Particulars of loss and expenses :—

1. Charges of Jones & Co., shipwrights, 450*l*. 2*s*.
2. Loss of use of ship from 1st February, 1883, to 1st of March, 1883, 280*l*.

Particulars of damage to cargo :—[*Insert them.*]

The plaintiff claims £

Place of trial, London.

(Signed)

Delivered

No. 6.

The defendant has infringed the plaintiff's patent, No. 14,084, Injunction, granted for the term of fourteen years, from the 21st of May, 1880, &c., for certain improvements in the manufacture of iron and steel, whereof the plaintiff was the first inventor.

Infringement of patent.

RULES OF THE SUPREME COURT.

Appx. C. The plaintiff claims an injunction to restrain the defendant from
s. 6. further infringement and 100% damages.
Nos. 6—9. Particulars of breaches are delivered herewith.
 _____ Place of trial, Durham.

(Signed)
Delivered

No. 7.

Damages for infringement of copyright. **The defendant has infringed the plaintiff's copyright in a book entitled "The History of Rome," registered on the day of**

Particulars of special damage are as follows:—

	£
Loss of sale of 50 copies . . .	50
Loss of profit in the copyright . .	50
	<hr/>
	100

**The plaintiff claims 100%.
Place of trial, Surrey.**

**(Signed)
Delivered**

No. 8.

Injunction, &c., for infringement of trade mark.

1. The defendant has infringed the plaintiff's trade mark.
2. The trade mark is [describe it].

[If the plaintiff is not the original proprietor of the trade mark, show shortly how his title is derived.]

3. The following are the acts complained of, viz. :—
[Set them out].

The plaintiff claims an injunction to restrain the defendant, his servants, and agents, from infringing the plaintiff's said trade mark, and in particular from *[stating any particular injunction sought]*.

The plaintiff also claims an account or damages.

(Signed)
Delivered

No. 9.

Seduction. The plaintiff has suffered damage from the seduction and carnal knowing by the defendant of *G. H.* the [daughter and] servant the plaintiff.

Particulars of special damage are as follows:—

	£	s.	d.
Loss of service from the 1st of March to the 30th of November, 1882	100	0	0
Nursing and medical attendance	10	10	0
	<hr/>		
	£110	10	0

**The plaintiff claims 500%.
Place of trial, Berkshire.**

(Signed)
Delivered

APPENDIX OF FORMS.

No. 10.

1. The plaintiff is the owner [*or lessee*] and occupier of a house, No. 700, Regent Street, in which are the following ancient lights:—

- (1.) The kitchen window in the basement on the south side.
- (2.) The two back dining room windows on the ground floor on the south side.
- (3.) The landing window and back drawing room window on the south side.

2. The defendant is erecting a building which will, if not stopped, materially diminish the light coming through the said windows.

The plaintiff claims an injunction to restrain the defendant, his contractors, servants, and workmen, from continuing the erection of the building, so as to obstruct or diminish the access of light to the said windows or any of them.

The plaintiff will also, if necessary, claim to have the said building pulled down, or damages for the injury he will sustain if the same is completed and not pulled down.

(Signed)
Delivered

Appx. C.
s. 6.
Nos. 10—
12.

Obstruction
of lights.

No. 11.

The plaintiff has suffered damage from offensive and pestilential Nuisance by smells and vapours caused by the defendant in the plaintiff's smells dwelling-house, No. 15, James Street, Durham.

The plaintiff claims:—

(1.) 50*l*.

- (2.) An injunction to restrain the defendant from the continuance or repetition of the said injury or the committal of any injury of a like kind in respect of the same property.

Place of trial, Yorkshire, West Riding.

(Signed)
Delivered

No. 12.

1. The plaintiff is the owner [*or lessee*] and occupier of a farm known as _____, through which there runs a river known as _____ Nuisance by pollution of water.

2. The defendant or persons in his employ pollute the water in the said river by passing into the same the refuse of the defendant's dye works, situate higher up the said river.

The plaintiff claims an injunction to restrain the defendant, his servants and agents, from sending from the said dye works into the said river any matter so as to pollute the waters thereof, or to render them unwholesome or unfit for use, to the injury of the plaintiff [*or, as the case may be*].

The plaintiff will also claim damages in respect of the said nuisance.

Place of trial, _____.

(Signed)
Delivered

RULES OF THE SUPREME COURT.

Appx. C.

No. 13.

s. 6.
Nos. 13—
15.

Fraudulent
prospectus.

1. On 31st January, 1883, the defendant issued a prospectus to the public relating to the *A. B. Company, Limited*.
 2. On Feb. 1st, 1883, the plaintiff received a copy of this prospectus.
 3. The plaintiff subscribed for 100 shares in the company on the faith of this prospectus.
 4. The prospectus contained misrepresentations, of which the following are particulars :—
 - a. The prospectus stated “ whereas in fact
 - b. The prospectus stated “ whereas in fact
 - c. The prospectus stated “ whereas in fact
 5. The defendant knew of the real facts as to the above particulars.
 6. The following facts, which were within the knowledge of the defendants, are material, and were not stated in the prospectus :—
 - a.
 - b.
 7. The plaintiff has paid calls to the company to the extent of 1000*l*.
- The plaintiff claims :
1. Repayment of 1000*l*. and interest.
 2. Indemnity.

(Signed)
Delivered

No. 14.

Fraudulent
sale of a
lease.

The plaintiff has suffered damage from the defendant inducing the plaintiff to buy the goodwill and lease of the *George public-house, Stepney*, by fraudulently representing to the plaintiff that the takings of the said public-house were 40*l*. a week, whereas in fact they were much less, to the defendant's knowledge.

Particulars of special damage :—
[*Fill them in.*]

The plaintiff claims £

(Signed)
Delivered

No. 15.

Malicious
prosecution.

The defendant maliciously and without reasonable and probable cause preferred a charge of larceny against the plaintiff before a justice of the peace, causing the plaintiff to be sent for trial on the charge and imprisoned thereon, and prosecuted the plaintiff thereon at the *Middlesex Quarter Sessions*, where the plaintiff was acquitted.

Particulars of special damage :—
Messrs. L. and L.'s bill of costs, 65*l*.
Loss in business from January 1, 1883, to February 18, 1883, 100*l*.
The plaintiff claims 500*l*.
Place of trial

(Signed)
Delivered

APPENDIX OF FORMS.

SECTION VII.

ACTIONS FOR RECOVERY OF LAND, &c.

Appx. C.
s. 7.
Nos. 1, 2.

No. 1.

1. The plaintiff is entitled to the possession of a farm and premises called Church Farm in the parish of St. James, in the county of Surrey, which was let by the plaintiff to the defendant for the term of three years from the 29th of September, 1879, which term has expired [or as tenant from year to year from the 29th September, 1875, which said tenancy was duly determined by notice to quit expiring on the 29th of September, 1881].

Landlord
against
tenant
whose term
has expired
&c.

The plaintiff claims possession and 50*l.* for mesne profits.

Place of trial, Surrey.

(Signed)
Delivered

No. 2.

1. The plaintiff is entitled to the possession of Blackacre in the parish of [or, of No. 2, Bridge Street, Bristol] in the county of

Heir-at-law
against
stranger.

2. On and before the of , 188 ,

A. B. was seised in fee and in possession of the premises.

3. On the of , 188 , the said

A. B. died so seised, whereupon—

4. The estate descended to the plaintiff, his eldest son and heir-at-law.

5. After the death of the said A. B. the defendant wrongfully took possession of the premises.

The plaintiff claims :—

1. Possession of the premises.

2. Mesne profits from the of

Place of trial,

(Signed)
Delivered

RULES OF THE SUPREME COURT.

Appx. P.
s. 1

APPENDIX D.

FORMS OF DEFENCE TO BE USED PURSUANT TO ORDER XIX.,
RULE 5.

SECTION I.

GENERAL FORM.

In the High Court of Justice. 18 . No.
Division. Between , Plaintiff,
and , Defendant.

Defence.

The defendant says that :—

1. } (To be filled up in the manner exemplified in the following
2. } forms.)
3. }

(Signed)
Delivered

Counterclaim.

The defendant says that :—

1. } (To be filled up in the manner exemplified in the following
2. } forms.)

The defendant counterclaims.

(Signed)
Delivered

Defence and Counterclaim.

Defence.

The defendant says :—

1. } (To be filled up.)
2. }

Counterclaim.

The defendant repeats paragraph 2 of his defence, and says that :—

3. } (To be filled up.)
4. }

The defendant counterclaims.

(Signed)
Delivered

APPENDIX OF FORMS.

SECTION II.

Appx. D.
s. 2.
No. 1.

TO ACTIONS SPECIALLY ASSIGNED TO THE CHANCERY DIVISION BY
SECTION 34 OF THE PRINCIPAL ACT. APPENDIX C., SECT. II.

To actions
for adminis-
tration.

1. The defendants do not admit the plaintiff's claim.
[or]
The defendant *A. B.* admits the plaintiff's claim, but not assets.
[or]
The defendant *C. D.* admits assets, but not the plaintiff's claim.
2. The claim is barred by the Statute of Limitations.
[State which.]
3. Payment was made by deceased.
4. The claim is fraudulent in the following particulars :
[Set out particulars.]
5. The defendant is entitled to a set off, of which the following are the particulars :
[Set out particulars.]
6. The claim was released by deed dated the _____ of _____.
7. Notice was given and assets distributed under statute 22 & 23 Vict. c. 35, s. 29.

Particulars of the Notice.

Advertisements in the *Times* of January 1, 1880.

„ *New York Herald*, February, 1881.

„ *Bombay Gazette* of January 25, 1881.

[Giving the titles of the newspapers and the dates of those in which the advertisement appeared.]

8. The personal estate of the testator is sufficient to pay the plaintiff his debt if established.
9. The defendant is not heir-at-law or devisee of the deceased.

(Signed)

Delivered

No. 1.

1. The defendant did not execute the mortgage.
 2. The mortgage was not assigned to the plaintiff [if more than one assignment is alleged say which is denied].
 3. The debt is barred by the Statute of Limitations.
 4. Payments have been made, viz. :—
10 July, 1874, £1000.
18 October, 1875, £500.
 5. The plaintiff took possession on the _____ of _____, and has received the rents ever since.
 6. The plaintiff released the debt by deed, dated 1 June, 1882.
 7. The defendant conveyed all his interest to *A. B.* by deed, dated 25 November, 1880.
- The defendant claims :—
1. Account.
 2. Re-conveyance.

To actions
for fore-
closure by
mortgagee.

(Signed)

Delivered

RULES OF THE SUPREME COURT.

Appx. D.
s. 2.
No. 2.

No. 2.

To same by
alleged
second
incum-
brancer who
claims
priority.

1. }
2. }
3. } (*As in preceding Form.*)
4. }
5. }
6. }

7. By a deed dated 1st June, 1880, the mortgagor *A. B.* mortgaged the property in question to the defendant to secure 5000*l.* and interest at 5 per cent. per annum.

The defendant claims—

1. A declaration of priority and foreclosure (and a receiver).

(Signed)

Delivered

[If the plaintiff claims payment of the mortgage debt, the defendant must, if he disputes his liability, show the grounds on which he does so as in other cases of debt; or he can claim indemnity against the owner of the Equity of Redemption under Order XVI., Rule 48.]

To actions
for redemp-
tion.

1. The plaintiff's right to redeem is barred by the Statute of Limitations.—[*State which.*]

2. The plaintiff assigned all interest in the property to *A. B.*

3. The defendant by deed, dated the _____ day of _____ assigned all his interest in the mortgage debt and property comprised in the mortgage to *A. B.*

4. The defendant never took possession of the mortgaged property, or received the rents thereof.

[If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits.]

(Signed)

Delivered

To actions
for specific
perform-
ance.

1. The defendant did not enter into the agreement.

2. *A. B.* was not the agent of the defendant [*if alleged by plaintiff*].

3. The plaintiff has not performed the following conditions:—
[*Conditions.*]

4. The defendants did not—[*Alleged acts of part performance.*]

5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matters:—[*State why.*]

6. The Statute of Frauds has not been complied with.

7. The agreement is uncertain in the following respects [*State them.*]

8. [*or*] The defendant* has been guilty of delay;

9. [*or*] The defendant* has been guilty of fraud [*or misrepresentation*];

10. [*or*] The agreement is unfair;

11. [*or*] The agreement was entered into by mistake.

The following are particulars of (8), (9), (10), (11), [*or as the case may be.*]

12. The agreement was rescinded under Conditions of Sale, No. 11 [*or by mutual agreement.*]

(Signed)

Delivered

* It is suggested that the word "defendant" here occurs in mistake for "plaintiff."

APPENDIX OF FORMS.

[In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e.g., Statute of Limitations, accord and satisfaction, release, fraud, &c.]

Appx. D.
s. 2.

SECTION III.

FORMS TO BE USED IN ACTIONS WITHIN THE EXCLUSIVE COGNIZANCE OF THE PROBATE, DIVORCE AND ADMIRALTY DIVISION. APPENDIX C., SECTION III.

Appx. D.
s. 3.
Nos. 1, 2.

No. 1.

The defendant is nephew and next of kin of the deceased, being son of *G. B.*, the brother of the deceased, who died in his lifetime. Interest suit.

The defendant claims :—

That the Court pronounce that the defendant is the nephew and next of kin of the deceased, and entitled to a grant of letters of administration of the personal estate and effects of the deceased.

(Signed)

Delivered

No. 2.

1. The said will and codicil of the deceased were not duly executed according to the provisions of the statute 1 Vict. c. 26. Probate of will in solemn form.

2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory, and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him, whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as is within the defendant's present knowledge being [*state the nature of the fraud*].

5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof, [*or of the contents of the residuary clause in the said will, as the case may be*].

6. The deceased made his true last will, dated the 1st day of January, 1873, and thereby appointed the defendant sole executor thereof.

The defendant claims :—

1. That the Court will pronounce against the said will and codicil propounded by the plaintiff:

2. That the Court will decree probate of the will of the deceased, dated the 1st of January, 1873, in solemn form of law.

(Signed)

Delivered

RULES OF THE SUPREME COURT.

Appx. D.
s. 3.
Nos. 3—6.
Bottomry

No. 3.

That there was no necessity to make the said bond, nor were reasonable steps taken to give notice of the intended hypothecation to the owners of the *Onward*, or the owners of the cargo.

(Signed)
Delivered

No. 4.

Equipment
and neces-
saries.

1. The equipment and repairs supplied and done were not necessities, and the claim is not a claim for necessities within section 3 of the Admiralty Court Act, 1861.

2. The alleged necessities were not supplied on the credit of the said vessel, but upon the personal credit of *J. B.*, who was the broker for the vessel, and upon the agreement that the plaintiffs were not to have recourse to the vessel.

(Signed)
Delivered

No. 5.

Possession.

1. The defendant did not withhold possession.
2. The defendant withheld possession on the following grounds:—
[*State them.*]

(Signed)
Delivered

No. 6.

Salvage.

1. The alleged services did not amount to salvage.
2. The defendant made tender of and has paid into Court 350%.

(Signed)
Delivered

Appx. D.
s. 4.

SECTION IV.

TO ACTIONS INCLUDED IN ORDER III., RULE 6, CLASSES A., B., C., D., E., AND F.

To actions
on bills of
exchange,
promissory
notes or
checks.

1. The defendant did not accept the bill.
2. The defendant did not make the note.
3. The defendant did not draw the check.
4. The defendant did not indorse to *A. B.*
5. The defendant [*or A. B.*] did not indorse to the plaintiff.
6. The bill was not presented for payment.
7. The defendant had not due notice of dishonour.
8. The plaintiff was not the holder at the commencement of the action.
9. The bill was accepted [*or the note was made*] for the accommodation of the defendant without consideration.
10. The bill was accepted for the accommodation of the drawer and indorsed to the plaintiff without consideration.
11. The bill was accepted and delivered to the drawer without

APPENDIX OF FORMS.

consideration for the purpose of his getting it discounted for the defendant, and the drawer, in fraud of the defendant, and contrary to the said purpose, indorsed the bill to the plaintiff without consideration [*or with notice of the said fraud, or overdue*].

Appx. D.
s. 4.

12. The defendant was induced to accept by the fraud of the drawer, who indorsed to the plaintiff without consideration [*or with notice of the fraud, or overdue*].

Particulars of the fraud are as follows:—The drawer on or about the 15th of May, 1882, falsely and fraudulently stated to the defendant that he had shipped 20 tons of pig iron for the defendant on board the *Ajax*, which he had not done.

13. The defendant accepted the bill [*or made the note*] for and on account of the price of 50 tons of coal to be delivered by the plaintiff to the defendant by the 1st of May, 1882, and the plaintiff failed to deliver the goods.

14. The bill [*or note, or check*] was rendered void after issue by a material alteration, viz., by the alteration of the date from the 21st of January to the 2nd of January.

(Signed)
Delivered

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not l.

To actions
for any
simple con-
tract debts
other than
bills, notes
or checks.

- [or]
4.)
 5. { Except as to l., same as { 1.
 6. { 2.

7. The defendant [*or A. B., the defendant's agent*] satisfied the claim by payment before action to the plaintiff [*or to C. D., the plaintiff's agent*] on the of , 18 .

8. The defendant satisfied the claim by payment after action to the plaintiff on the of , 18 .

(Signed)
Delivered

1. The bond [*or deed*] is not the defendant's bond [*or deed*].
2. The defendant made payment to the plaintiff on the day according to the condition of the bond.
3. The defendant made payment to the plaintiff, after the day named and before action, of the principal and interest mentioned in the bond.

To actions
on bonds or
contracts
under seal
for the pay-
ment of a
liquidated
amount in
money.

(Signed)
Delivered

1. The principal satisfied the claim by payment before action.
2. The defendant was released by the plaintiff giving time to the principal debtor, in pursuance of a binding agreement.

(Signed)
Delivered

In actions
on guaran-
ties,
whether
under seal
or not,
where the
Order III.,

claim against the principal is in respect of a debt or liquidated demand only.
Rule 6, Class (E.).

RULES OF THE SUPREME COURT.

Appx. D. 1. As to £50 parcel of the money claimed, the defendant is
s. 4. entitled to set-off for goods sold and delivered by the defendant to
the plaintiff. Particulars are as follows:—

To any action of debt.		£	s.	d.
	1882 Jan. 25. To 20 tons of Silkstone coal at 1 <i>l</i> . .	20	0	0
	„ Feb. 1. To 30 tons of Silkstone coal at 1 <i>l</i> . .	30	0	0
	Total . . .	£50	0	0

2. As to the whole [*or as to £* , parcel of the money
claimed], the defendant made tender before action [*or on the day on*
which it fell due] of £ , and has paid the same into Court.

(Signed)
Delivered

GENERAL DEFENCES.

Accord and satisfaction. 1. On 5th April, 1882, a brown horse was delivered by the de-
fendant to and accepted by the plaintiff in discharge of the alleged
cause of action ;

[*Or on 5th April, 1882, an agreement between the plaintiff and
the defendant whereby it was agreed between the plaintiff and the
defendant that the defendant should deliver the cargo of the Mar-
at the Surrey Commercial Docks instead of at Hull as per charter-
party of 1st March, 1882, was accepted in discharge of the alleged
cause of action.*]

**Bank-
ruptcy, &c.** 2. The defendant became bankrupt.
3. The plaintiff became bankrupt before action, and the cause of
action vested in the trustees of his property.

4. The defendant was discharged under a liquidation by arrange-
ment pursuant to the 125th section of the Bankruptcy Act, 1869.

5. The defendant compounded with his creditors under the 125th
section of the Bankruptcy Act, 1869, and duly paid to the plaintiff
the composition on the day appointed.

Coverture. 6. The defendant was covert at the time of making the alleged
contract [*or contracting the alleged debt*].

Infancy. 7. The defendant was an infant at the time of making the alleged
contract [*or contracting the alleged debt*].

**Payment
into Court.** 8. The defendant as to the whole action [*or as to £*
parcel of the money claimed, *or as to the plaintiff's claim on the*
guarantee of the of 18 , *or as the case*
may be], has paid into Court £ , and says that sum is
enough to satisfy the plaintiff's claim [*or the plaintiff's claim hereby*
pleaded to].

Release. 9. The causes of action were released by deed dated the 1st of
May, 1882, between the plaintiff, of the first part, and the de-
fendant, of the second part.

**Rescission
before
breach.** 10. The contract was rescinded [*or the defendant was exonerated*
by the plaintiff] before breach. Particulars are as follows:—An
arrangement between the plaintiff and the defendant, made verbally
on the 15th of April, 1882 [*or by letter from the defendant to the*
plaintiff, and answer of the plaintiff dated the 14th and 15th of
April, 1882].

**Statute of
limitations.** 11. The debt was barred by the Statute of Limitations [*or*
which].

APPENDIX OF FORMS.

12. (17th) section of the Statute of Frauds has not been complied with. **Appx. D.
ss. 5, 6.**

(Signed)
Delivered

Statute of
Frauds.

SECTION V.

TO ACTIONS FOR DAMAGES FOR BREACH OF CONTRACT OR DUTY.
APPENDIX C., SECT. V.

1. The defendant did not contract [*or promise, or agree*] as alleged. **Denials.**
2. The defendant did not receive the goods for the alleged purpose [*or on the alleged terms*].
3. The defendant did not receive the plaintiff as a passenger to be carried as alleged.
4. The defendant did not [*insert breaches denied*].
5. The defendant was not ready and willing to accept and pay for the goods [*or to deliver the goods, or as the case may be*].
6. There was contributory negligence on part of the plaintiff. **Contributory negligence.**
7. The plaintiff did not pay or tender the money for the carriage. **Carriers.**
8. The damage or loss occurred from the inherent vice [*or bad condition when received*] of the goods [*or horse, or as the case may be*].
9. The loss occurred by reason of the excepted perils mentioned in the charter-party [*or bill of lading*], that is to say the perils of the seas [*or fire, or as the case may be*].
10. The goods were above the value of 10*l.*, and consisted of articles mentioned in the first section of the Land Carriers Act (11 Geo. IV. and 1 Will. IV. c. 68), that is to say, silks [*or as the case may be*], and their value and nature was not declared or any increased charge paid, &c.
11. The charter-party was cancelled pursuant to cancelling clause therein, the ship not having arrived at port of loading on or before 1st May, 1882. **Charter-parties.**
12. The alleged liability of the defendant had ceased by reason of cesser clause in the charter-party, the cargo shipped having been worth more at the port of discharge than the freight or demurrage.
13. The loss was not by the perils insured against. **Insurance.**
14. The plaintiff was not interested in the subject matter of the insurance.
15. The ship was not seaworthy at commencement of risk [*or voyage*].
16. The plaintiff was not ready and willing to marry the defendant. **Breach of promise.**

(Signed)
Delivered

SECTION VI.

TO ACTIONS CLAIMING INJUNCTIONS, DAMAGES, OR DECLARATIONS OF RIGHT, FOUNDED UPON WRONGS. APPENDIX C., SECT. VI.

1. Denial of the several acts [*or matters*] complained of.

(Signed)
Delivered

To all
actions for
wrongs.

RULES OF THE SUPREME COURT.

Appx. D. **s. 6.**

To actions
for deten-
tion or
conversion
of chattels.

1. The goods [or chattels, or as the case may be] were not the plaintiff's.

2. The goods were detained for a lien to which the defendant was entitled.

Particulars are as follows :—

1882, May 3. To carriage of the goods claimed from London to Birmingham :—

£ s.
45 tons at 2s. 4 10

(Signed)
Delivered

To actions
for personal
bodily in-
juries or
injuries to
carriages,
goods, or
animals by
trespass or
negligence.

1. The defendant did the acts complained of in necessary self defence.

2. There was contributory negligence on the part of the plaintiff [or the plaintiff's servant].

(Signed)
Delivered

To actions
for infringe-
ment of a
patent.

1. The defendant did not infringe the patent.

2. The invention was not new.

3. The plaintiff was not the first or true inventor.

4. The invention was not useful.

5. [Denial of any other matter of fact affecting the validity of the patent.]

6. The patent was not assigned to the plaintiff.

(Signed)
Delivered

Copyright.

1. The plaintiff is not the author [assignee, &c., as the case may be].

2. The book was not registered.

3. The defendant did not infringe.

(Signed)
Delivered

Trade Mark.

1. The trade mark is not the plaintiff's.

2. The alleged trade mark is not a trade mark.

3. The defendant did not infringe.

(Signed)
Delivered

Light.

1. The plaintiff's lights are not ancient [or deny his other alleged prescriptive rights].

2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

Nuisance.

3. The defendant denies that he or his servants pollute the water [or do what is complained of].

[If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of his claim, i.e., whether by prescription, grant, or otherwise.]

4. The plaintiff has been guilty of laches, of which the following are particulars :—

1870. Plaintiff's mill began to work.

1871. Plaintiff came into possession.

1883. First complaint.

APPENDIX OF FORMS.

5. As to the plaintiff's claim for damages, the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. *[If other grounds are relied on, they must be stated, e.g., the Statute of Limitations as to past damage.]* Appx. D.
ss. 6—8.

(Signed)
Delivered

1. The said *A. B.* was not the servant of the plaintiff.
2. The defendant did not seduce and carnally know the said *A. B.* To actions
for seduc-
tion.

(Signed)
Delivered

SECTION VII.

TO ACTIONS FOR RECOVERY OF LAND. APPENDIX C., SECT. VII.

1. The defendant is in possession of the premises by himself or his tenant.

2. The defendant had no notice to quit.

(Signed)
Delivered

SECTION VIII.

COUNTERCLAIMS.

The defendant lent £500 to the plaintiff on 1st May, 1882.

The defendant counterclaims £500.

1. The defendant has suffered damage by the plaintiff's breach of a contract for the sale and delivery by the plaintiff to the defendant of 5,000 tons of Merthyr steam coal at 18s. 6d. per ton F.O.B. at Cardiff by equal monthly deliveries over the first five months of 1882.

2. The April and May instalments were not delivered.

Particulars of the damages :—

	£	s.	d.
Difference between market price in April and May, and the contract price, 2s. 6d. per ton on 2000 tons	250	0	0

The defendant counterclaims £250.

(Signed)
Delivered

RULES OF THE SUPREME COURT.

Appx. E.
ss. 1, 2.

APPENDIX E.

FORMS OF REPLY, &c., TO BE USED PURSUANT TO ORDER
XIX., RULE 5.

SECTION I.

General
Form.

18 . [*Here put the letter and number.*]
In the High Court of Justice.
Division.

Between , Plaintiff,
and
, Defendant.

Reply.

The plaintiff as to the defence says that—

- 1.
- 2.

The plaintiff as to the counterclaim says that—

- 1.
- 2.

(Signed)
Delivered

Reply.

To actions
on a
guarantee
to which
defence
raised of
time given
to the prin-
cipal and
counter-
claim for
non-deliv-
ery of
goods.

The plaintiff as to the defence says that—

1. He joins issue.
2. The agreement giving time to the principal expressly reserved remedies against the surety.

The plaintiff as to the counterclaim says that—

1. The defendant was not ready and willing to accept and pay for the goods.

(Signed)
Delivered

SECTION II.

EXAMPLE OF A STATEMENT OF CLAIM, DEFENCE, AND REPLY.

18 . [*Here put the letter and number.*]
In the High Court of Justice.
Queen's Bench Division.

Between A. B., Plaintiff,
and
C. D., Defendant.

APPENDIX OF FORMS.

Statement of Claim.

Appx. E.
s. 2.

The plaintiff's claim is for work done and materials provided by the plaintiff for the defendant at his request.

Particulars :—

1882. January 1 to May 31. To rebuilding house at Wigan, as per contract dated the 24th December, 1881	£	s.	d.
To extras as per account delivered	3,400	0	0
	243	0	0
	3,643	0	0
Paid on account	3,000	0	0
Balance due	643	0	0

The plaintiff also seeks to recover interest on the above balance from the 31st May, 1882, till payment or judgment.

Place of trial, Lancashire, Northern Division.

(Signed)

Delivered the 1st of January, 1883.

[*Heading as in General Form.*]

Defence and Counterclaim.

Defence.

The defendant says that—

1. Except as to 200*l.*, parcel of the money claimed, the architect did not grant his certificate pursuant to the contract.

2. As to 200*l.*, parcel of the money claimed, the defendant brings [*or has brought*] into Court 200*l.*, and says that sum is enough to satisfy the plaintiff's claim herein pleaded to.

Counterclaim.

The defendant says that—

1. The contract contained a clause whereby it was provided that the plaintiff should complete the works by the 31st March, 1882, or in default pay to the defendant 1*l.* a day for every subsequent day during which the works should remain unfinished, and they so remained unfinished for 61 days to the 31st May.

The defendant counterclaims 61*l.*

(Signed)

Delivered the 22nd of January, 1883.

[*Heading as in General Form.*]

Reply.

The plaintiff says that—

1. As to the first paragraph of the defence, he joins issue.

2. As to the second paragraph thereof, the plaintiff accepts the £ in satisfaction.

The plaintiff as to the counterclaim says that—

3. The liquidated damages were waived by ordering extras and material alterations in the works.

RULES OF THE SUPREME COURT.

Appx. E.
s. 2.

4. The defendant waived the liquidated damages by preventing the plaintiff from having access to the premises till a week after the agreed time.

(Signed)

Delivered the 5th of February, 1883.

Appx. E.
s. 3.
Nos. 1—3.

SECTION III.

DEFENCE INCLUDING AN OBJECTION IN POINT OF LAW.

No. 1.

[*Heading.*]

Defence.

To action on
a guarantee
for the price
of goods.

The defendant says that—

1. The goods were not supplied to *E. F.* on the guarantee.
2. The defendant will object that the guarantee discloses a *par* consideration on the face of it.

(Signed)

Delivered

No. 2.

[*Heading.*]

Defence.

To action
for verbal
slander
actionable
only by
reason of
special
damage.

The defendant says that—

1. The defendant did not speak or publish the words.
2. The words did not refer to the plaintiff.
3. The defendant will object that the special damage stated is not sufficient in point of law to sustain the action.

(Signed)

Delivered

No. 3.

[*Heading.*]

Defence.

To action
on a marine
policy
stated to
contain
clauses
that the
policy was
to be proof
of interest
and with-
out benefit
of salvage.

The defendant says that—

1. The defendant did not make the policy.
2. The loss was not by the perils insured against.
3. The defendant will object that the policy was avoided by 19 Geo. II. c. 37, s. 1.

(Signed)

Delivered

APPENDIX OF FORMS.

APPENDIX F.

Appx. F.
Nos. 1—4

FORMS OF JUDGMENT.

No. 1.

DEFAULT OF APPEARANCE AND DEFENCE IN CASE OF LIQUIDATED DEMAND.

18 . [*Here put the letter and number.*]
In the High Court of Justice.
Division.

Between *A. B.*, Plaintiff,
and
C. D. and *E. F.*, Defendants.

30th November, 18 .

The defendants [*or the defendant C. D.*] not having appeared to the writ of summons herein [*or not having delivered any defence*], it is this day adjudged that the plaintiff recover against the said defendant £ and costs, to be taxed.

No. 2.

INTERLOCUTORY JUDGMENT IN DEFAULT OF APPEARANCE OR DEFENCE WHERE DEMAND UNLIQUIDATED.

[*Heading as in Form 1.*]

The day of 18 .

No appearance having been entered to the writ of summons [*or no defence having been delivered by the defendant herein*].

It is this day adjudged that the plaintiff recover against the defendant the value of the goods [*or damages, or both, as the case may be*], to be assessed.

No. 3.

JUDGMENT IN DEFAULT OF APPEARANCE IN ACTION FOR RECOVERY OF LAND.

[*Heading as in Form 1.*]

30th November, 18 .

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the indorsement on the writ described as

No. 4.

JUDGMENT IN DEFAULT OF APPEARANCE AND DEFENCE AFTER ASSESSMENT OF DAMAGES.

[*Heading as in Form 1.*]

30th November, 18 .

The defendants not having appeared to the writ of summons hereir [*or not having delivered any defence*], and a writ of inquiry, dated , 1876, having been issued directed to the sheriff

RULES OF THE SUPREME COURT.

Appx. F. of _____ to assess the damages which the plaintiff was entitled to recover, and the said sheriff having by his return dated the _____ day of _____, 18____, returned that the said damages have been assessed at £ _____, it is adjudged that the plaintiff recover £ _____ and costs, to be taxed.

No. 5.

JUDGMENT AFTER APPEARANCE AND ORDER UNDER ORDER XIV. RULE 1.

[Heading as in Form 1.]

The _____ day of _____, 18____.

The defendant having appeared to the writ of summons herein and the plaintiff having by the order of _____, dated the _____ day of _____, 18____, obtained leave to sign judgment under the Rules of the Supreme Court, Order 14, Rule 1, *[recite order]*:

It is this day adjudged that the plaintiff recover against the defendant £ _____ *[or possession of the land in the indorsement on the writ described as _____]* and costs, to be taxed.

The above costs have been taxed and allowed at £ _____ as appears by a (taxing officer's) certificate, dated the _____ day of _____, 18____.

No. 6.

JUDGMENT AT TRIAL BY JUDGE WITHOUT A JURY.

[Heading as in Form 1.]

[If in Chancery Division, name of judge.]

This action coming on for trial [the _____ day of _____ and] this day, before _____ in the presence of counsel for the plaintiff and the defendants *[or, if some of the defendants do not appear, for the plaintiff and the defendant C. D., no one appearing for the defendants E. F. and G. H., although they were duly served with notice of trial as by the affidavit of _____ filed the _____ day of _____ appears]*, upon hearing the probate of the will of _____, the answers of the defendants C. D., E. F., and G. H., to interrogatories, the admission in writing, dated _____, and signed by [Mr _____, the solicitor for] the plaintiff A. B. and by [Mr _____, the solicitor for] the defendant C. D., the affidavit of _____ filed the _____ day of _____, the affidavit of _____ filed the _____ day of _____, the evidence of _____ taken on their oral examination at the trial, and an exhibit marked X., being an indenture dated, &c., and made between [parties], and what was alleged by counsel on both sides: This Court doth declare, &c.

And this Court doth order and adjudge, &c.

No. 7.

JUDGMENT AFTER TRIAL WITH A JURY.

[Heading as in Form 1.]

15th November, 18____.

The action having on the 12th and 13th November, 18____, been tried before the Honourable Mr. Justice _____ with a special jury

APPENDIX OF FORMS.

of the county of _____, and the jury having found [*state findings as in officer's certificate*], and the said Mr. Justice having ordered that judgment be entered for the plaintiff for £ _____ and costs [*or as the case may be*]: Therefore it is adjudged that the plaintiff recover against the defendant £ _____ and £ _____ for his costs [*or that the plaintiff recover nothing against the defendant, and that the defendant recover against the plaintiff £ _____ for his costs of defence, or as the case may be*].

Appx. F.
Nos. 7—
11.

No. 8.

JUDGMENT AFTER TRIAL BEFORE REFEREE.

[*Heading as in Form 1.*]

30th November, 18 ____.

The action having on the 27th November, 18 ____, been tried before X. Y., Esq., an official [*or special*] referee, and the said X. Y. having found? [*or having ordered that judgment be entered*] [*state substance of referee's certificate*], it is this day adjudged that

No. 9.

JUDGMENT AFTER TRIAL OF QUESTIONS OF ACCOUNT BY REFEREE.

[*Heading as in Form 1.*]

The _____ day of _____, 18 ____.

The questions of account in this action having been referred to _____, and he having found that there is due from the _____ to the _____ the sum of £ _____ and directed that the _____ do pay the costs of the reference,

It is this day adjudged that the _____ recover against the said _____ £ _____ and costs to be taxed.

The above costs have been taxed and allowed at £ _____ as appears by a (taxing officer's) certificate dated the day of _____, 18 ____.

No. 10.

JUDGMENT UPON MOTION FOR JUDGMENT.

[*Heading as in Form 1.*]

30th November, 18 ____.

This day before _____ Mr. X. of counsel for the plaintiff [*or as the case may be*], moved on behalf of the said _____ [*state judgment moved for*], and the said Mr. X. having been heard of counsel for _____ and Mr. Y. of counsel for _____ the Court adjudged

No. 11.

JUDGMENT AFTER TRIAL BY COURT WITHOUT JURY.

[*Heading as in Form 1.*]

This action having on the _____ day of _____, 18 ____

RULES OF THE SUPREME COURT.

Appx. F. been tried before _____, and the said _____ on the
Nos. 11— day of _____, 18 _____, having ordered that judgment
14. be entered for the _____ for £ _____
— It is this day adjudged that the _____ recover from the
£ _____ and costs to be taxed.

The above costs have been taxed and allowed at £
as appears by a (taxing officer's) certificate dated the
day of _____, 18 _____.
Judgment entered the _____ day of _____, 18 _____.

No. 12.

JUDGMENT IN PURSUANCE OF ORDER.

[*Heading as in Form 1.*]

Pursuant to the order of _____ dated _____, 18 _____,
whereby it was ordered
and default having been made
It is this day adjudged that the plaintiff recover against the said
defendant £ _____ and costs to be taxed.

The above costs have been taxed and allowed at £
as appears by a (taxing officer's) certificate dated the
day of _____, 18 _____.

No. 13.

JUDGMENT ON CERTIFICATE OF REGISTRAR OF COUNTY COURT.

[*Heading as in Form 1.*]

The _____ day of _____, 18 _____.
This action having been ordered under section 26 of the County
Court Act, 1856 (19 & 20 Vict. c. 108), to be tried in the county
court of _____ and the registrar of that court having certified
that the result was

It is this day adjudged that _____ recover against
£ _____ and costs to be taxed.

The above costs have been taxed and allowed at £
as appears by a (taxing officer's) certificate dated the
day of _____, 18 _____.

No. 14.

JUDGMENT FOR DEFENDANT'S COSTS ON DISCONTINUANCE.

[*Heading as in Form 1.*]

The _____ day of _____, 18 _____.
The plaintiff having by a notice in writing dated the
day of _____, 18 _____, wholly discontinued this action [*or with-*
drawn his claim in this action for, or withdrawn so much of his
claim in this action as relates to _____ or as the case may be]

It is this day adjudged that the defendant recover against the
plaintiff costs to be taxed.

APPENDIX OF FORMS.

The above costs have been taxed and allowed at £
as appears by a taxing officer's certificate dated the
day of , 18 .

, Appx. F.
Nos. 14—
17.

No. 15.

JUDGMENT FOR PLAINTIFF'S COSTS AFTER CONFESSION OF DEFENCE.

[Heading as in Form 1.]

The day of , 18 .

The defendant in his defence herein having alleged a ground of
defence which arose after the commencement of this action, and the
plaintiff having on the day of , 18 , delivered
a confession of that defence,

It is this day adjudged that the plaintiff recover against the
defendant costs to be taxed.

The above costs have been taxed and allowed at £
as appears by a taxing officer's certificate dated the
day of , 18 .

No. 16.

JUDGMENT FOR COSTS AFTER ACCEPTANCE OF MONEY PAID INTO COURT.

[Heading as in Form 1.]

The day of , 18 .

The defendant having paid into court in this action the sum of
£ in satisfaction of the plaintiff's claim, and the
plaintiff having by his notice dated the day of
18 , accepted that sum in satisfaction of his entire cause of action,
and the plaintiff's costs herein having been taxed, and the defendant
not having paid the same within forty-eight hours after the said
taxation ;

It is this day adjudged that the plaintiff recover against the
defendant costs to be taxed.

The above costs have been taxed and allowed at £
as appears by a taxing officer's certificate dated the
day of , 18 .

No. 17.

JUDGMENT WHERE NO JUDGMENT ENTERED AT TRIAL BY JURY.

[Heading as in Form 1.]

The day of , 18 .

This action having on the 18 , been tried before
and a jury of the of
, and the jury having found and the
not having thought fit to order any judgment to be
entered,

Now on motion before the Court for judgment on behalf of the
, the Court having

It is this day adjudged that the recover against the
the sum of £ and costs to be taxed.

RULES OF THE SUPREME COURT.

Appx. F. The above costs have been taxed and allowed at £
 Nos. 17, 18. as appears by a master's certificate dated the day
 , 18 .
 Judgment entered the day of , 18 .

No. 18.

JUDGMENT ON MOTION AFTER TRIAL OF ISSUE

[Heading as in Form 1.]

The day of , 18 .
 The issues [or questions of fact] arising in this action [or cause
 matter] by the order dated the day of
 ordered to be tried before having on the
 day of been tried before and the
 having found
 Now on motion, before the Court for judgment on behalf of the
 , the Court having
 It is this day adjudged that the recover against the
 the sum of £ and costs to be taxed

The above costs have been taxed and allowed at £
 as appears by a master's certificate dated the day
 , 18 .
 Judgment entered the day of , 18 .

Appx. G.
 Part I
 No. 1.

APPENDIX G.

PART I

FORMS OF PRÆCIPUE

No. 1.

OF FIERI FACIAS.

18 . [Here put the letter and number.]

In the High Court of Justice.
 Division.

Between A. B., Plaintiff,
 and

C. D. and others, Defendants.

Seal a writ of fieri facias directed to the sheriff of
 to levy against C. D. the sum of £
 interest thereon at the rate of £ per centum per annum
 from the day of [and £ cost]
 to judgment [or order] dated day of
 [Taxing officer's certificate, dated day of
 X. Y., solicitor for [party on whose
 behalf writ is to issue.]

APPENDIX OF FORMS.

No. 2.

OF ELEGIT.

[Heading as in Form 1.]

Seal a writ of elegit directed to the sheriff of
against of in the county of
for not paying to A. B. the sum of £ together with
interest thereon, from the day of [and the
sum of £ for costs,] with interest thereon at the rate
of £4 per centum per annum.

Judgment [or order] dated day of 18 .

[Taxing officer's certificate, dated day of 18 .

X. Y.,

Solicitor for

No. 8.

OF VENDITIONI EXPONAS.

[Heading as in Form 1.]

Seal a writ of venditioni exponas directed to the sheriff of
to sell the goods and of C. D. taken under a writ of fieri
facias in this action tested day of .

X. Y.,

Solicitor for

No. 4.

OF FIERI FACIAS DE BONIS ECCLESIASTICIS.

[*Heading as in Form 1.*]

Seal a writ of fieri facias de bonis ecclesiasticis directed to the Bishop [or Archbishop, as the case may be] of _____ to levy against C. D. the sum of £ _____.

Judgment [or order] dated day of .

[Taxing officer's certificate, dated _____ day of _____].

X. Y.,

Solicitor for

No. 5.

OF SEQUESTERRI FACIAS DE BONTIS ECCLESIASTICIS.

[Heading as in Form 1.]

Seal a writ of sequestrari facias directed to the Bishop of
against *C. D.* for not paying to *A. B.* the sum of £

for not paying to *A. B.* the sum of £

No. 6.

OF WRIT OF SEQUESTRATION.

[Heading as in Form 1.]

Seal a writ of sequestration against *C. D.* for not
at the suit of *A. B.*, directed to [*names of Commissioners*].

at the suit of A. B., directed to [names of Commissioners].

Order dated **day of** .

RULES OF THE SUPREME COURT.

Appx. G.
Part I.
Nos. 7—11.

No. 7.

OF WRIT OF POSSESSION.

[Heading as in Form 1.]

Seal a writ of possession directed to the sheriff of _____ to
deliver possession to A. B. of _____
Judgment dated _____ day of _____.

No. 8.

OF WRIT OF DELIVERY.

[Heading as in Form 1.]

Seal a writ of delivery directed to the sheriff of _____ to
make delivery to A. B. of _____.

No. 9.

OF COMMISSION OF APPRAISEMENT AND SALE.

18 . [Here put the letter and number.]

In the High Court of Justice.

Probate, Divorce and Admiralty Division.

Between A. B., Plaintiff,
and

The owners of the

I, A. B., solicitor for the [state whether plaintiff or defendant], pray
a commission for the appraisement and sale of the [state name and
nature of property], which was decreed by the Court on the
day of _____, 18 .

Dated the _____ day of _____, 18 .
[To be signed by the solicitor, or by his clerk for him.]

No. 10.

OF WRIT OF ATTACHMENT.

[Heading as in Form 1.]

Seal in pursuance of order dated _____ day of _____
an attachment directed to the sheriff of _____ against C. D.
for not delivering to A. B.

No. 11.

OF DISTINGAS AGAINST EX-SHERIFF.

[Heading as in Form 1.]

Seal a writ of distringas nuper vicecomitem quod venditioni
exponat, directed to the sheriff of _____, to sell the goods and
of _____, taken under a writ of fieri facias in
this action tested the _____ day of _____, 18 .

Dated the _____ day of _____, 18 .

(Signed)

(Address)

Solicitor for the

APPENDIX OF FORMS.

No. 12.

OF INQUIRY.

[*Heading as in Form 1.*]

Seal a writ of inquiry directed to the sheriff of
assess the damages in this action.

Judgment dated

Dated the day of , 18 .

(Signed)

(Address)

Solicitor for the

Appx. G.
Part I.
Nos. 12—
15.

to _____

No. 13.

OF CERTIORARI.

[*Heading as in Form 1.*]

Seal in pursuance of order dated a writ of certiorari
directed to

Dated the day of , 18 .

(Signed)

(Address)

Solicitor for the

No. 14.

OF PROHIBITION.

18 . [*Here put letter and number.*]

In the High Court of Justice, &c.

Division.

In the matter of a certain now depending in the Court.

Between , Plaintiff,

and

, Defendant.

Seal a writ of prohibition directed to the judge of the above-
named Court and to the above-named plaintiff to prohibit them from
further proceeding in the said , 18 .

Dated the day of , 18 .

(Signed)

(Address)

Solicitor for the

No. 15.

OF MANDAMUS.

[*Heading as in Form 1.*]

Seal in pursuance of order dated a writ of mandamus
directed to , commanding to
returnable

Dated the day of , 18 .

(Signed)

(Address)

Solicitor for the

RULES OF THE SUPREME COURT.

**Appx. G
Part I.
Nos. 16—
20.**

No. 16.

OF HABEAS CORPUS AD TESTIFICANDUM.

[Heading as in Form 1.]

Seal in pursuance of order dated _____, a writ of habeas
corpus ad testificandum directed to the _____
before _____ to be

Dated the _____ day of _____, 18 .

(Signed)

(Address)

Solicitor for the

No. 17.

OF COMMISSION TO EXAMINE WITNESSES.

[Heading as in Form 1.]

Seal in pursuance of order dated _____ a writ in the
nature of a mandamus or commission to examine witnesses directed
to _____

Dated the _____ day of _____, 18 .

(Signed)

(Address)

Solicitor for the

No. 18.

OF COMMISSION OF PARTITION.

[Heading as in Form 1.]

Seal in pursuance of order dated _____ a commission of
partition directed to _____ returnable

Dated the _____ day _____, 18 .

(Signed)

(Address)

Solicitor for the

No. 19.

OF AMENDED SUMMONS.

[Heading as in Form 1.]

Amend in pursuance of order [or fiat] dated _____ the writ
of summons in this action by [set out amendments when required].

Dated the _____ day of _____, 18 .

(Signed)

(Address)

Solicitor for the

No. 20.

OF RENEWED SUMMONS.

[Heading as in Form 1.]

Seal in pursuance of order dated _____, a renewed writ of
summons in this action, indorsed as follows

Dated the _____ day of _____, 18 .

(Signed)

(Address)

Solicitor for the

No. 21.
OF SUBPOENA.
[*Heading as in Form 1.*]

**Appx. G.
Part I.
Nos. 21—
25.**

directed to

Dated the day of returnable , 18 .
(Signed)
(Address)
Solicitor for the

No. 22.

ENTRY OF ACTION FOR TRIAL.
[*Heading as in Form 1.*]

Dated the _____ day of _____, 18 ____.

(Signed) _____

(Address) _____

No. 23.

ENTRY OF APPEAL.

[*Heading as in Form 1.*]

Enter this appeal from the order [or judgment] of
in this action, dated the day of , 18 .
Dated the day of , 18 .
(Signed)
(Address)

No. 24.

ENTRY FOR ARGUMENT GENERALLY.
[Heading as in Form 1.]

Dated the _____ day of _____, 18 ____.

(Signed) _____

(Address) _____

No. 25.

ENTRY OF SPECIAL CASE.
[Heading as in Form 1.]

Set down the _____ dated the _____ day of _____
18 , _____ of Mr. _____ the _____ referee in this
_____ for hearing as a special case.
Dated the _____ day of _____, 18 .
(Signed)
(Address)

Appx. G.
Part I
Nos. 28—
28.

MEMORANDUM OF SERVICE OF NOTICE OF JUDGMENT.

**Enter memorandum of service of notice of judgment made in
this action, and dated the day of , 18 .
on the undermentioned persons, viz :—**

Name of Party served.	Date of Service.

No. 27.

[*Heading as in Form 1.*]

Search for _____ . Dated the _____ day of _____
18 ____ .

(Signed)
(Address)

Agent for _____
Solicitor or _____

MEMORANDUM ON NOTICE OF JUDGMENT.

Take notice that from the time of the service of this notice you [or, as the case may be, the infant or person of unsound mind] will be bound by the proceedings in the above cause in the same manner as if you [or the said infant or person of unsound mind] had been originally made a party and that you [or the said infant or person of unsound mind] may, on entering an appearance at the Central Office, attend the proceedings under the within mentioned judgment [or order] and that you [or the said infant or person of unsound mind] may within one month after the service of this notice apply to the Court to add to the judgment [or order].

APPENDIX OF FORMS.

APPENDIX H.

Appx. H.
No. 1.

FORMS OF WRITS.

No. 1.

WRIT OF FIERI FACIAS.

18 . [*Here put the letter and number*].

18 . B. No. .

In the High Court of Justice.
Division.

Between *A. B.*, Plaintiff,
and
C. D., Defendant.

Victoria, by the grace of God, &c.

of Great Britain and Ireland Queen, Defender of the Faith.

To the sheriff of greeting.

We command you that of the goods and chattels of *C. D.* in your bailiwick you cause to be made the sum of £ and also interest thereon at the rate of £ per centum per annum from the day of * which said sum of money and interest were lately before us in our High Court of Justice in a certain action [*or certain actions, as the case may be*] wherein *A. B.* is plaintiff and *C. D.* defendant [*or in a certain matter there depending intituled "In the matter of E. F." as the case may be*] by a judgment [*or order, as the case may be*] of our said Court, bearing date the day of , adjudged [*or ordered, as the case may be*] to be paid by the said *C. D.* to *A. B.*, together with certain costs in the said judgment [*or order, as the case may be*] mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said Court at the sum of £ as appears by the certificate of the said taxing officer, dated the day of . And that of the goods and chattels of the said *C. D.* in your bailiwick you further cause to be made the said sum of £ [costs] together with interest thereon at the rate of £4 per centum per annum from the day of ,* and that you have that money and interest before us in our said Court immediately after the execution hereof to be paid to the said *A. B.* in pursuance of the said judgment [*or order, as the case may be*]. And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution thereof. And have there then this writ.

Witness, &c.

* Day of the judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be.

RULES OF THE SUPREME COURT.

Appx. H.
Nos. 2, 3

No. 2.

FIERI FACIAS ON ORDER FOR COSTS.

[*Heading as in Form 1.*]

Victoria, by the grace of God, &c., to the sheriff of
greeting: We command you, that of the goods and chattels of
in your bailiwick you cause to be made the sum
of for certain costs which by an order of our High
Court of Justice dated the day of , 18
were ordered to be paid by the said to
and which have been taxed and allowed at the said sum, and interest
on the said sum at the rate of £4 per centum per annum from the
day of , 18 , and that you have the
said sum and interest before us in our said Court immediately after
the execution hereof, to be rendered to the said . And
in what manner, &c. And have there then this writ.

Witness, &c.

Levy £ and £ for costs of execution, &c.,
and also interest on £ at £4 per centum per annum
from the day of , 18 , until payment;
besides sheriff's poundage, officers' fees, costs of levying, and all
other legal incidental expenses.

This writ was issued by, &c., of , agent for
of , solicitor for the .

The is a and resides at , in
your bailiwick.

No. 3.

WRIT OF ELEGIT.

[*Heading as in Form 1.*]

Victoria, by the grace of God, &c.

To the sheriff of greeting.

Whereas lately in our High Court of Justice in a certain action
[or certain actions, as the case may be] there depending, wherein A. B.
is plaintiff and C. D. defendant [or in a certain matter there depend-
ing, intituled, "In the matter of E. F.," as the case may be], by a
judgment [or order, as the case may be] of our said Court made in
the said action [or matter, as the case may be], and bearing date the
day of , it was adjudged [or ordered, as
the case may be] that C. D. should pay unto A. B. the sum of
£ , together with interest thereon after the rate of
£ per centum per annum from the day of
 , together also with certain costs as in the said judg-
ment [or order, as the case may be] mentioned, and which costs have
been taxed and allowed by , one of the taxing officers of
our said Court, at the sum of £ as appears by the certi-
ficate of the said taxing officer, dated the day of .
And afterwards the said A. B. came into our said Court, and accord-
ing to the statute in such case made and provided, chose to be deli-
vered to him all the goods and chattels of the said C. D. in your
bailiwick, except his oxen and beasts of the plough, and also all

APPENDIX OF FORMS.

**Appx. H.
Nos. 3, 4.**

such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick as the said *C. D.*, or any one in trust for him, was seised or possessed of on the day of in the year of our Lord * or at any time afterwards, or over which the said *C. D.* on the said day of or at any time afterwards had any disposing power which he might without the assent of any other person exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £ and £ , together with interest upon the said sum of £ at the rate of £ per centum per annum from the said day of , and on the said sum of £ (costs) at the rate of £4 per centum per annum from the day of shall have been levied. Therefore we command you that without delay you cause to be delivered to the said *A. B.* by a reasonable price and extent all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick as the said *C. D.*, or any person or persons in trust for him, was or were seised or possessed of on the said day of † or at any time afterwards, or over which the said *C. D.* on the said day of , † or at any time afterwards had any disposing power which he might without the assent of any other person exercise for his own benefit, to hold the said goods and chattels to the said *A. B.*, as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said two several sums of £ and £ , together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us in our Court aforesaid, immediately after the execution thereof, under your seals, and the seals of those by whose oath you shall make the said extent and appraisalment. And have there then this writ.

Witness, &c.

No. 4.

WRIT OF VENDITIONI EXPONAS.

[*Heading as in Form 1.*]

Victoria, by the grace of God, &c.

To the sheriff of greeting.

Whereas by our writ we lately commanded you that of the goods and chattels of *C. D.* [*here recite the fieri facias to the end*]. And on the day of you returned to us in the Division of our High Court of Justice aforesaid, that

* The day on which the judgment or order was made.

† The date of the certificate of taxation. The writ must be so moulded as to follow the substance of the judgment or order.

RULES OF THE SUPREME COURT.

Appx. H. by virtue of the said writ to you directed you had taken goods and
No. 4—6. chattels of the said *C. D.* to the value of the money and interest
 aforesaid, which said goods and chattels remained in your hands
 unsold for want of buyers. Therefore, we being desirous that the
 said *A. B.* should be satisfied his money and interest aforesaid,
 command you that you expose to sale and sell, or cause to be sold,
 the goods and chattels of the said *C. D.*, by you in form aforesaid
 taken, and every part thereof, for the best price that can be gotten
 for the same, and have the money arising from such sale before us
 in our said Court of Justice immediately after the execution hereof,
 to be paid to the said *A. B.* And have there then this writ.
 Witness, &c.

No. 5.

WRIT OF FIERI FACIAS DE BONIS ECCLESIASTICIS.

[*Heading as in Form 1.*]

Victoria, by the grace of God, &c. To the Right Reverend Father
 in God [*John*] by Divine permission Lord Bishop of
 greeting: We command you, that of the ecclesiastical goods of *C. D.*,
 clerk in your diocese, you cause to be made *£* which
 lately before us in our High Court of Justice in a certain action
 [or certain actions, as the case may be] wherein *A. B.* is plaintiff and
C. D. is defendant [or in a certain matter there depending, intituled
 "In the matter of *E. F.*, as the case may be], by a judgment [or
 order, as the case may be] of our said Court, bearing date the
 day of , was adjudged [or ordered, as the case may be]
 to be paid by the said *C. D.* to the said *A. B.*, together with interest
 on the said sum of *£* at the rate of *£* per
 centum per annum, from the day of , and
 have that money, together with such interest as aforesaid, before us
 in our said Court immediately after the execution hereof, to be
 rendered to the said *A. B.*, for that our sheriff of re-
 turned to us in our said Court on [or "at a day now
 past"] that the said *C. D.* had not any goods or chattels or any lay
 fee in his bailiwick whereof he could cause to be made the said
£ and interest aforesaid or any part thereof, and that
 the said *C. D.* was a beneficed clerk (to wit) rector of rectory [or
 vicar of the vicarage] and parish church of , in the said
 sheriff's county, and within your diocese [as in the return]. And in
 what manner, &c. And have you there then this writ.

Witness, &c.

No. 6.

WRIT OF FIERI FACIAS TO THE ARCHBISHOP DE BONIS ECCLESIASTICIS DURING THE VACANCY OF A BISHOP'S SEE.

Victoria, by the grace of God, &c. To the Right Reverend
 Father in God [*John*] by Divine Providence Lord Archbishop of
 Canterbury, Primate of all England and Metropolitan, greeting:
 We command you, that of the ecclesiastical goods of *C. D.*, clerk in
 the diocese of , which is within the province of Canter-
 bury, as ordinary of that church, the episcopal see of
 now being vacant, you cause to be made [&c., conclude as in the
 preceding form].

APPENDIX OF FORMS.

No. 7.

Appx. H.
Nos. 7—9.

WRIT OF SEQUESTRARI FACIAS DE BONIS ECCLESIASTICIS.

[Heading as in Form 1.]

Victoria, by the grace of God, &c. To the Right Reverend Father in God [John] by Divine permission Lord Bishop of , greeting : Whereas we lately commanded our sheriff of that he should omit not by reason of any liberty of his county. but that he should enter the same, and cause [to be made, if after the return to a fieri facias, or delivered, if after the return to an elegit, &c., and in either case recite the former writ]. And whereupon our said sheriff of on [or "at a day past"] returned to us in the Division of our said Court of Justice, that the said C. D. was a beneficed clerk ; that is to say, rector of the rectory [or vicar of the vicarage] and parish church of , in the county of , and within your diocese, and that he had not any goods or chattels, or any lay fee in his bailiwick [here follow the words of the sheriff's return]. Therefore, we command you that you enter into the said rectory [or vicarage] and parish church of , and take and sequester the same into your possession, and that you hold the same in your possession until you shall have levied the said l. and interest aforesaid, of the rents, tithes, rent-charges in lieu of tithes, oblations, obventions, fruits, issues, and profits thereof, and other ecclesiastical goods in your diocese of and belonging to the said rectory [or vicarage] and parish church of , and to the said C. D. as rector [or vicar] thereof, to be rendered to the said A. B., and in what manner, &c. And have you there then this writ.

Witness, &c.

No. 8.

WRIT OF POSSESSION.

[Heading as in Form 1.]

Victoria, by the grace of God, &c. To the sheriff of , greeting : Whereas lately in our High Court of Justice, by a judgment of the Division of the same Court [A. B. recovered] or [E. F. was ordered to deliver to A. B.] possession of all that with the appurtenances in your bailiwick : Therefore, we command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause the said A. B. to have possession of the said land and premises with the appurtenances. And in what manner, &c.

And have you there then this writ.

Witness, &c.

No. 9.

WRIT OF POSSESSION IN ADMIRALTY ACTION.

18 . [Here put the letter and number.]

In the High Court of Justice.

Probate, Divorce and Admiralty Division.

Between A. B., plaintiff,
and

The owners of the .

RULES OF THE SUPREME COURT.

Appx. H. Victoria, by the grace of god, &c. To the Marshal of the Probate, Divorce and Admiralty Division of the High Court of Justice, and to all and singular his substitutes, greeting. Whereas in an action of possession commenced in our said High Court on behalf of _____ against the _____ or vessel called the _____ her tackle, apparel, and furniture, [and against _____ inter-vening,] the judge has ordered possession of the said _____ or vessel to be delivered up to the said _____ or to his lawful attorney for his use. We therefore hereby command you to release the said vessel, her tackle, apparel, and furniture, from the arrest made by virtue of our warrant in that behalf, and to deliver possession thereof to the said _____, or to his lawful attorney for his use.

Witness, &c.
Writ of possession.
Taken out by _____ (Seal.)

No. 10.

WRIT OF DELIVERY.

[Heading as in Form 1.]

Victoria, by the grace of God, &c. To the sheriff of _____ greeting : We command you, that without delay you cause the following chattels, that is to say [*here enumerate the chattels recovered by the judgment or order for the return of which execution has been ordered to issue*], to be returned to A. B., which the said A. B. lately in our High Court of Justice recovered against C. D. [or C. D. was ordered to deliver to the said A. B.] in an action in the _____ Division of our said Court.* And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said C. D. by all his lands and chattels in your bailiwick, so that neither the said C. D. nor any one for him do lay hands on the same until the said C. D. render to the said A. B. the said chattels.†

And in what manner, &c.

And have you there then this writ.

Witness, &c.

No 11.

The like, but instead of a distress until the chattel is returned, commanding the Sheriff to levy on defendant's goods the assessed value of it

[*Proceed as in the preceding form until the*, and then thus :*] And we further command you, that if the said chattels cannot be found in your bailiwick, of the goods and chattels of the said C. D. in your bailiwick you cause to _____ £ _____ [the assessed value of the chattels].† And in what manner, &c.

And have you there then this writ.

Witness, &c.

[*If in either of the preceding forms it is wished to include damages, costs, and interest, proceed to the † and continue thus :*]

And we further command you that of the goods and chattels of the said C. D. in your bailiwick, you cause to be made the sum of £ _____ [damages]. And also interest thereon at the rate of _____

APPENDIX OF FORMS.

£4 per centum per annum, from the day of , Appx. H.
which said sum of money and interest were in the said action by the **Nos. 11—**
judgment therein [*or* by order dated the day of , **18.**
adjudged [*or* ordered] to be paid by the said C. D. to A. B. together
with certain costs in the said judgment [*or* order] mentioned, and
which costs have been taxed and allowed by one of the taxing officers
of our said Court at the sum of £ , as appears by the
certificate of the said taxing officer dated the day of
. And that of the goods and chattels of the said
C. D. in your bailiwick you further cause to be made the said sum
of £ [costs], together with interest thereon at the rate of
£4 per centum per annum from the day of ,
and that you have that money and interest before us in our said
Court immediately after the execution hereof to be paid to the said
A. B. in pursuance of the said judgment [*or* order].
And in what manner, &c.
And have you there this writ.
Witness, &c.

No. 12.

WRIT OF ATTACHMENT.

[Heading as in Form 1.]

Victoria, by the grace of God, &c. To the sheriff of
greeting.

We command you to attach *C. D.* so as to have him before us in the Division of our High Court of Justice wheresoever the said Court shall then be, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf, and hereof fail not, and bring this writ with you.

Witness, &c.

No. 13.

WRIT OF SEQUESTRATION.

[Heading as in Form 1.]

Victoria, by the grace of God, &c. To [names of not less than four Commissioners] greeting.

Whereas lately in the Division of our High Court of Justice in a certain action there depending, wherein *A. B.* is plaintiff and *C. D.* and others are defendants [*or, in a certain matter there depending, intituled "In the matter of E. F.," as the case may be*], by a judgment [*or order, as the case may be*] of our said Court made in the same action [*or matter*], and bearing date the _____ day of _____, 18____, it was ordered that the said *C. D.* should pay into Court to the credit of the said action the sum of £_____, [*or as the case may be*]. Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said *C. D.*, and to collect, receive, and sequester into your hands not only all the

RULES OF THE SUPREME COURT.

Appx. H.
Nos. 13,
14.

rents and profits of his said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estates whatsoever ; and therefore we command you. any three or two of you, that you do at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements, and real estates of the said C. D., and that you do collect, take, and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said C. D. shall [pay into Court to the credit of the said action the sum of £ , or as the case may be,] clear his contempt, and our said Court make other order to the contrary.

Witness, &c.

No. 14.

DISTRINGAS AGAINST EX-SHERIFF.

[Heading as in Form 1.]

Victoria, by the grace of God, &c., to the sheriff of greeting.

We command you that you distrain late sheriff of your county aforesaid by all his lands and chattels in your bailiwick, so that neither he nor anyone by him do lay hands on the same until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that the said expose for sale and sell or cause to be sold for the best price that can be gotten for the same, those goods and chattels which were of in your bailiwick, to the value of £ , the sum of £ which lately before us in our High Court of Justice in a certain action wherein , plaintiff, and , defendant, , by a † of our said Court, bearing date the day of , was † to be paid by the said to the said , and of the sum of £ , the amount at which the costs in the said † mentioned have been taxed and allowed, and of interest on the said sum of £ , at the rate of £4 per centum per annum from the day of , and on the said sum of £ , at the same rate from the day of , which goods and chattels he lately took by virtue of our writ, and which remain in his hands for want of buyers, as the said late sheriff hath lately returned to us in our said Court. And have the money arising from such sale before us in our said Court immediately after the execution hereof, to be paid to the said . And have there then this writ.

Witness, &c.

This writ was issued by, &c.

The defendant is a , and resides at in your bailiwick.

* "the amount of, or "part of."
† "judgment" or "order."
‡ "adjudged" or "ordered."

APPENDIX OF FORMS.

No. 15.

Appx. H.
Nos. 15,
16.

FIERI FACIAS ON JUDGMENT REMOVED FROM LORD MAYOR'S COURT.

[*Heading as in Form 1.*]

Victoria, by the grace of God, &c., to the sheriff of ,
greeting ;

Whereas by the judgment of the Lord Mayor's Court, London, it
has been adjudged that the said recover against the
said the sum of £ [debt and costs].

And whereas this judgment has been removed into our High
Court of Justice, and has become of the same effect as a judgment
recovered in that Court :

And whereas the costs attendant on the removal of the said judg-
ment were on the [day of removal] day of , 18 ,
taxed and allowed at £ [costs of removal].

Therefore we command you, that of the goods and chattels of the
said in your bailiwick, you cause to be made the said
sums of £ and £ , with interest thereon at
the rate of £4 per centum per annum from the said
day of , 18 , and that you have that money and
interest before us in our said Court immediately after the execution
hereof, to be rendered to the said . And in what
manner, &c. And have then there this writ.

Witness, &c.

Levy £ , and £ for costs of execution,
and also interest on £ at £4 per centum per annum,
from the day of , 18 , until payment ;
besides sheriff's poundage, officers' fees, costs of levying, and all other
legal incidental expenses.

This writ was issued by, &c.

The defendant is a , and resides at ,
in your bailiwick.

No. 16.

COMMISSION OF APPRAISEMENT AND SALE.

[*Heading as in Form 9.*]

Victoria, by the grace of God, &c. To the Marshal of the Probate,
Divorce, and Admiralty Division of our said High Court, and to all
and singular his substitutes, greeting. Whereas in an action of
, commenced in our said High Court on behalf of
against [and against
intervening], the judge has ordered the said to be ap-
praised and sold. We therefore hereby authorise and command you
to reduce into writing an inventory of the said , and
having chosen one or more experienced person or persons, to swear
him or them to appraise the same according to the true value
thereof, and upon a certificate of such value having been reduced
into writing to cause the said to be sold by public
auction for the highest price, not under the appraised value thereof,
that can be obtained for the same. And we further command you,

RULES OF THE SUPREME COURT.

Appx. H. immediately upon the sale being completed, to pay the proceeds
No. 16. arising therefrom into the Registry of the said Division, and to file
the certificate of appraisement signed by you and the appraiser or
appraisers, and an account of the sale signed by you, together with
this commission.

Witness, &c.

Commission of Appraisement and
Taken out by

Sale.

(Seal.)

Appx. J.
Nos. 1, 2.

APPENDIX J.

FORMS OF SUBPŒNA, &c.

No. 1.

SUBPŒNA AD TESTIFICANDUM (GENERAL FORM).

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between , Plaintiff,
and
, Defendant.

Victoria, by the grace of God, &c., to [*the names of three witnesses
may be inserted*] greeting: We command you to attend before
at on day, the day of
18 , at the hour of in the noon, and so from day to
day until the above cause is tried, to give evidence on behalf of the
plaintiff [*or defendant*].

Witness, &c.

No. 2.

HABEAS CORPUS AD TESTIFICANDUM.

[*Heading as in Form 1.*]

Victoria, by the grace of God, &c., to the [keeper of our prison
at]

We command you that you bring , who it is said is
detained in our prison under your custody , before
at on day, the day of
at the hour of in the noon, and so from day to
day until the above action is tried, to give evidence on behalf of the
. And that immediately after the said
shall have so given his evidence you safely conduct him to the prison
from which he shall have been brought.

Witness, &c.

This writ was issued, &c.

APPENDIX OF FORMS.

No. 3.

Appx. J.
Nos. 3—6.

SUBPŒNA DUCES TECUM (GENERAL FORM).

[Heading as in Form 1.]

Victoria, by the grace of God, &c., to [*the names of three witnesses may be inserted*] greeting: We command you to attend before
at on day, the day
of , 18 , at the hour of in the noon,
and so from day to day until the above cause is tried, to give evidence on behalf of the , and also to bring with you and produce at the time and place aforesaid [*specify documents to be produced*].

Witness, &c.

No. 4.

SUBPŒNA AD TESTIFICANDUM AT ASSIZES.

[Heading as in Form 1.]

Victoria, by the grace of God, &c., to [*the names of three witnesses may be inserted*] greeting: We command you to attend before our justices assigned to take the assizes in and for the county of ,
to be holden at on day, the day
of , 18 , at the hour of in the noon,
and so from day to day during the said assizes until the above cause is tried, to give evidence on behalf of the

Witness, &c.

No. 5.

SUBPŒNA DUCES TECUM AT ASSIZES.

[Heading as in Form 1.]

Victoria, by the grace of God, &c., to [*the names of three witnesses may be inserted*] greeting: We command you to attend before our justices assigned to take the assizes in and for the county of ,
to be holden at on day, the day
of , 18 , at the hour of in the noon,
and so from day to day during the said assizes, until the above cause is tried, to give evidence on behalf of the , and also to bring with you and produce at the time and place aforesaid [*specify documents to be produced*].

Witness, &c.

No. 6.

SUBPŒNA AD TESTIFICANDUM AT SITTINGS OF HIGH COURT.

[Heading as in Form 1.]

Victoria, by the grace of God, &c., to [*the names of three witnesses may be inserted*] greeting: We command you to attend at the sittings of the Division of our High Court of Justice,
for to be holden at on day
the day of , 18 , at the hour of
in the noon, and so from day to day during the said sittings, until the above cause is tried, to give evidence on behalf of the

Witness, &c.

RULES OF THE SUPREME COURT.

**Appx. J.
Nos. 7—9.**

No. 7.

SUBPOENA DUCES TECUM AT SITTINGS OF HIGH COURT.

[Heading as in Form 1.]

Victoria, by the grace of God, &c., to *[the names of three witnesses may be inserted]*. We command you to attend at the sittings of the Division of our High Court of Justice for to be holden at _____ on _____ day the _____ day of _____, 18____, at the hour of _____ o'clock in the _____ noon, and so from day to day until the above cause is tried, to give evidence on behalf of the _____ and also to bring with you and produce at the time and place aforesaid *[specify documents to be produced]*.

Witness, &c.

No. 8.

WRIT OF INQUIRY FOR ASSESSMENT OF DAMAGES.

[Heading as in Form 1.]

Victoria, by the grace of God, &c., to the sheriff of _____ greeting.

Whereas it has been adjudged that the plaintiff recover against the defendant damages to be assessed.

Therefore we command you, that by the oaths of twelve good and lawful men of your bailiwick you inquire what damages the plaintiff is entitled to recover under the said judgment, and that forthwith thereafter you send the inquisition which you shall take thereupon to our said Court, under your seal and the seals of those by whose oaths you take the inquisition, together with this writ.

Witness, &c.

This writ was issued by, &c.

The defendant is a _____,
and reside at _____,
in your bailiwick.

No. 9.

CERTIORARI TO COUNTY COURT.

[Heading as in Form 1.]

Victoria, by the grace of God, &c., to the judge of the County Court holden at _____, greeting.

We, willing for certain causes to be certified of a plaint levied in our Court before you against _____ at the suit of _____, command you that you send to us forthwith in the Division of our High Court of Justice the said plaint with all things touching the same, as fully and entirely as the same remain in our said Court before you, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, &c.

This writ was issued by, &c.

APPENDIX OF FORMS.

No. 10.

CERTIORARI (GENERAL).

[*Heading as in Form 1.*]

Appx. J.
Nos. 10—
12.

Victoria, by the grace of God, &c., to the
greeting.

We, willing for certain causes to be certified of
command you that you send to us in our High Court of Justice on
the day of the aforesaid, with all things
touching the same, as fully and entirely as they remain in
together with this writ, that we may further cause to be done there-
upon what of right we shall see fit to be done.

Witness, &c.

This writ was issued by, &c.

No. 11.

PROHIBITION.

[*Heading as in Form 1.*]

Victoria, by the grace of God, &c., to the [judge of the County
Court holden at] and to [name of plaintiff] of
greeting.

Whereas we have been given to understand that you the said
have [entered a plaint against] *C.D.* in the said Court,
and that the said Court has no jurisdiction in the said [cause] or to
hear and determine the said [plaint] by reason that [*state facts show-
ing want of jurisdiction*].

We therefore hereby prohibit you from further proceeding in the
said [action] in the said Court.

Witness, &c.

This writ was issued by, &c.

No. 12.

MANDAMUS.

Victoria, by the grace of God, &c. to of
greeting.

Whereas by [*here recite Act of Parliament or Charter if the act
required to be done is founded on either one or the other.*] And whereas
we have been given to understand and be informed in the Queen's
Bench Division of our High Court of Justice before us that [*insert
necessary inducement and averments*]. And you the said
were then and there required by [*insert demand*] but that you the said
well knowing the premises, but not regarding your
duty in that behalf, then and there wholly neglected and refused to
[*insert refusal*] nor have you or any of you at any time since
, in contempt of us and to the great damage and
grievance of as we have been informed from their com-
plaint made to us. Whereupon we being willing that due and
speedy justice should be done in the premises as it is reasonable, do
command you the said and every of you firmly en-
joining you that you [*insert command*] or that you show us cause to
the contrary thereof, lest by your default the same complaint should

RULES OF THE SUPREME COURT.

Appx. J. be repeated to us and how you shall have executed this our writ
No. 13, make known to us in our said Court forthwith then returning to us
14 this our said writ, and this you are not to omit.

Witness, JOHN DUKE, BARON COLERIDGE, the _____ day of _____
 , in the _____ year of our reign.

By the Court.
 (Signed) COCKBURN

No. 13.

COMMISSION TO EXAMINE WITNESSES.

[Heading as in Form 1.]

Victoria, by the grace of God, &c., to _____ of _____
 and _____ of _____ Commissioners named by and _____
 behalf of the _____ and to _____ of _____
 _____ of _____ Commissioners named by and _____
 behalf of the _____ greeting: Know ye that we in con-
 fidence of your prudence and fidelity have appointed you and _____
 these presents give you power and authority to examine on inter-
 rogatories and vivâ voce as hereinafter mentioned witnesses _____
 behalf of the said _____ and _____ respectively.

before you or any two of you, so that one Commis-
 sioner only on each side be present and act at the examination.
 And we command you as follows:

1. Both the said _____ and the said _____ shall be
 at liberty to examine on interrogatories and vivâ voce on the subject
 matter thereof or arising out of the answers thereto such witnesses
 as shall be produced on their behalf with liberty to the other party
 to cross-examine the said witnesses on cross-interrogatories and vivâ
 voce, the party producing any witness for examination being at
 liberty to re-examine him vivâ voce; and all such additional vivâ
 voce questions, whether on examination, cross-examination, or
 re-examination, shall be reduced into writing, and with the answer
 thereto shall be returned with the said Commission.

2. Not less than _____ days before the examination of any
 witness on behalf of either of the said parties, notice in writing
 signed by any one of you, the Commissioners of the party on whose
 behalf the witness is to be examined, and stating the time and place
 of the intended examination and the names of the witnesses to be
 examined, shall be given to the Commissioners of the other party by
 delivering the notice to them, or by leaving it at their usual place of
 abode or business, and if the Commissioners or Commissioner of the
 party neglect to attend pursuant to the notice, then one of you, the
 Commissioners of the party on whose behalf the notice is given, shall
 be at liberty to proceed with and take the examination of the witness
 or witnesses ex parte, and adjourn any meeting or meetings, or con-
 tinue the same from day to day until all the witnesses intended to
 be examined by virtue of the notice have been examined, without
 giving any further or other notice of the subsequent meeting or
 meetings.

3. In the event of any witness on his examination, cross-exami-
 nation, or re-examination producing any book, document, letter,
 paper, or writing, and refusing for good cause to be stated in his
 deposition to part with the original thereof, then a copy thereof, or
 extract therefrom, certified by the Commissioners or Commissioner

APPENDIX OF FORMS.

present and acting to be a true and correct copy or extract shall be annexed to the witnesses' deposition. **Appx. J.
No. 13.**

4. Each witness to be examined under this Commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the Commissioners or Commissioner present at the examination.

5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and vivâ voce questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the Commissioners or Commissioner present at the examination, and to be previously sworn according to his or their several religions, by or before the said Commissioners or Commissioner truly to interpret the questions to be put to the witness and his answers thereto.

6. The depositions to be taken under this Commission shall be subscribed by the witness or witnesses, and by the Commissioners or Commissioner who shall have taken the depositions.

7. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Senior Master of the Supreme Court of Judicature on or before the day of enclosed in a cover under the seals or seal of the Commissioners or Commissioner.

8. Before you or any of you in any manner act in the execution hereof you shall severally take the oath hereon indorsed on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your several religions and is considered by you respectively to be binding on your respective consciences. In the absence of any other Commissioner, a Commissioner may himself take the oath.

And we give you or any one of you authority to administer such oath to the other or others of you.

Witness, &c.

This writ was issued by, &c.

WITNESSES' OATH.

You are true answer to make to all such questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God.

COMMISSIONERS' OATH.

You [or I] shall, according to the best of your [or my] skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the Commission within written. So help you [or me] God.

RULES OF THE SUPREME COURT.

Appx. J.
Nos. 13,
14.

INTERPRETER'S OATH.

You shall truly and faithfully, and without partiality to any either of the parties in this cause, and to the best of your ability interpret and translate the oath or oaths, affirmation or affirmations which he shall administer to, and all and every the questions which shall be exhibited or put to, all and every witness and witnesses produced before and examined by the Commissioners named in the Commission within written, as far forth as you are directed and employed by the said Commissioners, to interpret and translate the same out of the English into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language. So help you God.

CLERK'S OATH.

You shall truly, faithfully, and without partiality to any either of the parties in this cause, take, write down, transcribe, and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said Commissioners named in the Commission within written, as far forth as you are directed and employed by the Commissioners to take, write down, transcribe or engross the said questions and depositions. So help you God.

Direction of Interrogatories, &c., when returned by the Commissioners :—

THE SENIOR MASTER OF THE SUPREME COURT OF JUDICATURE
ROYAL COURTS OF JUSTICE, LONDON.

No. 14.

COMMISSION TO EXAMINE WITNESSES.

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Probate, Divorce and Admiralty Division.

Between A. B., Plaintiff,
and

The owners of the

Victoria, by the grace of God, &c., to [*state name and address of examiner or commissioner appointed*], greeting : Whereas in an action of commenced in our said High Court of Justice on behalf of against , [and against intervening], the judge has ordered a commission to be issued for the examination of witnesses concerning the truth of the matters at issue in the said cause. We therefore hereby authorise you, upon the day of , 18 , at , in the presence of the solicitors in the said action, or in the presence of their or either of their lawfully appointed substitutes, or otherwise notwithstanding the absence of either of them, to swear the witnesses

APPENDIX OF FORMS.

who shall be produced before you for examination in the said cause, and cause them to be examined, and their depositions to be reduced into writing. We further authorise you to adjourn (if necessary) the said examinations from time to time and from place to place, as you may find expedient. And we command you, upon the examinations being completed, to transmit the depositions and the whole proceedings had and done before you, together with this commission, to the Registry of the said Division of our said Court.

Appx. J
No. 14.

Witness, &c.

E. P.,
Registrar.

Commission to examine
Witnesses.

Taken out by

APPENDIX K.

Appx. K.
Nos. 1, 2.

No. 1.

SUMMONS (GENERAL FORM).

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between , Plaintiff,
and
, Defendant.

Let all parties concerned attend the judge [or master] in chambers
on day the day of , 18 , at
 o'clock in the noon, on the hearing of an
application on the part of .

Dated the day of , 18 .

This summons was taken out by of ,
solicitor for
To

No. 2.

ORDER (GENERAL FORM).

[*Heading as in Form 1.*]

*Judge [or Master] in Chambers.

Between

Upon hearing , and upon reading the affidavit of
 filed the day of , 18 , and

*Insert
name of
Judge or
Master.

It is ordered and that the costs of this
application be

Dated the day of , 18 .

RULES OF THE SUPREME COURT.

**Appx. K.
Nos. 3—5.**

No. 3.

SUMMONS FOR DIRECTIONS PURSUANT TO ORDER XXX.

[Heading as in Form 1.]

Fill in a
date not
less than
4 days from
service of
summons.

Let all the parties concerned attend Master []
chambers on [] day the [] day of []
18 [], at [] o'clock in the [] noon, on the []
ing of an application on the part of [] for directions []

[Here state all matters or proceedings previous to trial on which
directions are required.]

Dated the [] day of [], 18 [].
This summons was taken out by []
solicitor for []
To []

No. 4.

ORDER FOR DIRECTIONS PURSUANT TO ORDER XXX

[Heading as in Form 1.]

Upon hearing [] and upon reading []
ordered as follows :—

1. That the plaintiff deliver to the defendant further and better
particulars with dates and items of his claim, and that unless []
particulars be delivered within [] days from the date
this order, all further proceedings be stayed until the delivery
thereof.

2. That the plaintiff and defendant be at liberty to deliver to
each other interrogatories in writing, and that the said parties
respectively answer the said interrogatories as prescribed by Order
Rules 8 and 26.

3. That the [] be at liberty to issue a commission for the
examination of witnesses on his behalf at [] and that the
trial of the action be stayed until the return of the said commission
the usual long order for the said commission to be drawn up, and
unless agreed upon by the parties within one week, to be settled by
the master.

4. That the action be tried in the county of []
Judge.

5. That either party be at liberty without further summons to
apply to the master herein for further directions, such application
to be made upon two clear days' notice to be served upon the other
party.

6. That the costs of this application be costs in the action.
Dated [] day of [], 18 [].

No. 5.

ORDER FOR TIME.

[Heading as in Form 1.]

Upon hearing [], and upon reading the affidavit of []
[], filed the [] day of []
and []

APPENDIX OF FORMS.

It is ordered that the _____ shall have _____ time **Appx. K.**
and that the costs of this application be _____ **Nos. 5-9.**
Dated the _____ day of _____, 18 _____.

No. 6.

ORDER UNDER ORDER XIV., No. 1.

[Heading as in Form 1.]

Upon hearing _____, and upon reading the affidavit of
filed the _____ day of _____, 18 _____, and

It is ordered that the plaintiff may sign final judgment in this action for the amount indorsed on the writ, with interest, if any [or possession of the land in the indorsement of the writ described as], and costs to be taxed, and that the costs of this application be

Dated the day of , 18 .

No. 7.

ORDER UNDER ORDER XIV., No. 2.

[Heading as in Form 1.]

Upon hearing _____, and upon reading the affidavit of _____, filed the _____ day of _____, 18 _____, and _____.

It is ordered that the defendant be at liberty to defend this action by delivering a defence within days after service of this order, and that the costs of this application be

Dated the day of , 18 .

No. 8.

ORDER UNDER ORDER XIV., No. 3.

[Heading as in Form 1.]

Upon hearing _____, and upon reading the affidavit of _____, filed the _____ day of _____, 18 _____, and _____

It is ordered that if the defendant pay into Court within a week from the date of this order the sum of £ , he be at liberty to defend this action by delivering a defence within days after service of this order, but that if that sum be not so paid the plaintiff be at liberty to sign final judgment for the amount indorsed on the writ of summons, with interest, if any, and costs, and that in either event the costs of this application be .

Dated the day of , 18 .

No. 9.

ORDER UNDER ORDER XIV., No. 4.

[Heading as in Form 1.]

Upon hearing _____, and upon reading the affidavit of _____, filed the _____ day of _____, 18 _____, and _____

RULES OF THE SUPREME COURT.

Appx. K. It is ordered that if the defendant pay into Court within a week
Nos. 9— from the date of this order the sum of £ , he be at
12. liberty to defend this action as to the whole of the plaintiff's claim.

And it is ordered that if that sum be not so paid the plaintiff be
 at liberty to sign judgment for that sum, and the defendant be at
 liberty to defend this action as to the residue of the plaintiff's
 claim.

And it is ordered that in either event the defence be delivered
 within days after service of this order, and that the
 costs of this application be

Dated the day of , 18 .

No. 10.

ORDER TO AMEND.

[Heading as in Form 1.]

Upon hearing , and upon reading the affidavit of
 , filed the day of , 18
 and

It is ordered that the plaintiff be at liberty to amend the writ of
 summons in this action by , and that the costs of this
 application be

Dated the day of , 18 .

No. 11.

ORDER FOR PARTICULARS (PARTNERSHIP).

[Heading as in Form 1.]

Upon hearing , and upon reading the affidavit of
 , filed the day of , 18
 and

It is ordered that the furnish the with
 a statement in writing, verified by affidavit, setting forth the names
 of the persons constituting the members or co-partners of their firm
 pursuant to the Rules of the Supreme Court, 1883, Order 16, Rule 14
 and that the costs of this application be

Dated the day of , 18 .

No. 12.

ORDER FOR PARTICULARS (GENERAL).

[Heading as in Form 1.]

Upon hearing , and upon reading the affidavit of
 , filed the day of , 18
 and

It is ordered that the plaintiff deliver to the defendant
 an account in writing of the particulars of the plaintiff's claim in
 this action, and that unless such particulars be de-
 livered within days from the date of this order all
 further proceedings be stayed until the delivery thereof, and that
 the costs of this application be

Dated the day of , 18 .

APPENDIX OF FORMS.

No. 13.

ORDER FOR PARTICULARS (ACCIDENT CASE).

[*Heading as in Form 1.*]

Appr. K.
Nos. 13—
16.

Upon hearing _____, and upon reading the affidavit of
_____, filed the _____ day of _____, 18 _____,
and

It is ordered that the plaintiff deliver to the defendant an account
in writing of the particulars of the injuries mentioned in the state-
ment of claim, together with the time and place of the accident, and
the particular acts of negligence complained of, and that unless
such particulars be delivered within _____ days from the
date of this order, all further proceedings in this action be stayed
until the delivery thereof, and that the costs of this application
be _____.

Dated the _____ day of _____, 18 _____.

No. 14.

ORDER TO DISCHARGE OR VARY ON APPLICATION BY THIRD PARTY.

[*Heading as in Form 1.*]

Upon hearing _____, and upon reading the affidavit of
_____, filed the _____ day of _____, 18 _____,
and

It is ordered that the order of _____ in this action dated
the _____ day of _____, 18 _____, be discharged [or varied
by _____], and that the costs of this application be _____.

Dated the _____ day of _____, 18 _____.

No. 15.

ORDER TO DISMISS FOR WANT OF PROSECUTION.

[*Heading as in Form 1.*]

Upon hearing _____, and upon reading the affidavit of
_____, filed the _____ day of _____, 18 _____,
and

It is ordered that this action be, for want of prosecution, dismissed
with costs to be taxed and paid to the defendant by the plaintiff,
and that the costs of this application be _____.

Dated the _____ day of _____, 18 _____.

No. 16.

ORDER FOR DELIVERY OF INTERROGATORIES.

[*Heading as in Form 1.*]

Upon hearing _____, and upon reading the affidavit of
_____, filed the _____ day of _____, 18 _____,
and

It is ordered that the _____ be at liberty to deliver to the
_____ interrogatories in writing, and that the said
do answer the interrogatories as prescribed by Order 31, Rules 8
and 26, of the Rules of the Supreme Court, and that the costs of
this application be _____.

Dated the _____ day of _____, 18 _____.

Appx. K.
Nos. 17—
19.

ORDER FOR AFFIDAVIT AS TO DOCUMENTS.
[Heading as in Form 1.]

No. 18.

Upon hearing _____, and upon reading the affidavit of _____
 _____, filed the _____ day of _____, 19____
 and _____

No. 19.

Upon hearing _____, and upon reading the affidavit of _____,
 _____, filed the _____ day of _____, 19____,
 and _____

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APPENDIX OF FORMS.

the voyage upon which the alleged loss happened. Also all protests, **Appx. K.**
surveys, log books, charter-parties, tradesmen's bills for repairs, **Nov. 19—**
average statements, letters, invoices, bills of parcels, bills of lading, **.22.**
manifests, accounts, accounts-current, accounts-sales, bills of ex-
change, receipts, vouchers, books, documents, correspondence papers,
and writings (whether originals, duplicates or copies respectively),
which are now in the custody, possession, or power of the
his brokers, solicitors, or agents, in any way relating or referring
to the matters in question in this action, with liberty for the
to inspect and take copies of or extracts from the same or any of
them, and that in the meantime all further proceedings be stayed,
and that the costs of this application be

Dated the day of , 18 .

No. 20.

ORDER FOR SERVICE OUT OF JURISDICTION.

[Heading as in Form 1.]

Upon hearing , and upon reading the affidavit of
 , filed the day of , 18 ,
and

It is ordered that the plaintiff be at liberty to issue
a writ for service out of the jurisdiction against

And it is further ordered that the time for appearance to the said
writ be within days after the service thereof, and that
the costs of this application be

Dated the day of , 18 .

No. 21.

ORDER FOR SUBSTITUTED SERVICE.

[Heading as in Form 1.]

Upon hearing , and upon reading the affidavit of
 , filed the day of , 18 ,
and

It is ordered that service of a copy of this order, and of a copy of
the writ of summons in this action, by sending the same by a pre-
paid post letter, addressed to the defendant at ,
shall be good and sufficient service of the writ.

Dated the day of , 18 .

No. 22.

ORDER FOR RENEWAL OF WRIT.

[Heading as in Form 1.]

Upon hearing , and upon reading the affidavit of
 , filed the day of , 18 ,
and

It is ordered that the writ in this action be renewed for six months
from the date of its renewal, pursuant to the Rules of the Supreme
Court, Order 8, Rule 1.

Dated the day of , 18 .

RULES OF THE SUPREME COURT.

APPX. K.
Nos. 23,
24.

No. 23.

ORDER FOR ISSUE OF NOTICE CLAIMING CONTRIBUTION.

[Heading as in Form 1.]

Upon hearing _____, and upon reading the affidavit of
_____, filed the _____ day of _____, 18 ____
and _____

It is ordered that the defendant _____ be at liberty to issue
a notice claiming _____ over against _____, pursuant
to the Rules of the Supreme Court, Order 16, Rule 48.

Dated the _____ day of _____, 18 ____.

No. 24.

ORDER OF REFERENCE.

[Heading as in Form 1.]

Upon hearing _____ and by consent

It is ordered as follows :

1. *[State matters to be referred]* shall be referred to the award
of _____.

2. The arbitrator shall have all the powers as to certifying and
amending of a judge of the High Court of Justice.

3. The arbitrator shall make and publish his award in writing of
and concerning the matters referred, ready to be delivered to the
parties in difference, or such of them as require the same (or their
respective personal representatives, if either of the said parties die
before the making of the award) on or before the _____ next,
or on or before such further day as the arbitrator may from time to
time appoint and signify in writing signed by him and indorsed on
this order.

4. The said parties shall in all things abide by and obey the award
so to be made.

5. The costs of the said cause and the costs of the reference and
award shall be _____

6. The arbitrator may (if he think fit) examine the said parties to
this cause, and their respective witnesses, upon oath or affirmation.

7. The said parties shall produce before the arbitrator all books,
deeds, papers, and writings in their or either of their custody or
power relating to the matters in difference.

8. Neither the plaintiff nor the defendant shall bring or prosecute
any action against the arbitrator of or concerning the matters so to
be referred.

9. If either party by affected delay or otherwise wilfully prevent
the said arbitrator from making an award, he or they shall pay such
costs to the other as _____ may think reasonable and just.

10. In the event of either of the said parties disputing the validity
of the said award, or moving the _____ to set it aside, the
said _____ shall have power to remit the matters hereby
referred or any or either of them to the reconsideration of the
arbitrator.

11. In the event of the arbitrator declining to act or dying before
he has made his award, the said parties may, or if they cannot agree,
the master may, on application by either side, appoint a new
arbitrator.

APPENDIX OF FORMS.

12. Unless restrained by any order of the Court or a judge, the party or parties in whose favour the award shall be made shall be at liberty within _____ days after service of a copy of the award on the solicitor or agent of the other party to sign final judgment in accordance with the award, and for all costs that he or they may be entitled to under this order, and under the award, together with the costs of the said judgment.

Appx. K.
Nos. 24—
27.

Dated the _____ day of _____, 18 ____.

No. 26.

ORDER FOR EXAMINATION OF WITNESSES BEFORE ARBITRATOR.

[Heading as in Form 1.]

Upon hearing _____, and upon reading the affidavit of _____ filed the _____ day of _____, 18 __, and

It is ordered that _____ attend before _____, the arbitrator herein, on _____, the _____ days of _____, 18 __, at _____, and then and there submit to be examined on oath or affirmation on behalf of the _____ touching the matters referred to the said arbitrator.

Dated the _____ day of _____, 18 ____.

No. 26.

ORDER FOR EXAMINATION OF WITNESSES AND PRODUCTION OF DOCUMENTS.

[Heading as in Form 1.]

Upon hearing _____, and upon reading the affidavit of _____, filed the _____ day of _____, 18 __, and

It is ordered that _____ attend before _____, the arbitrator herein, on _____, the _____ days of _____, 18 __, at _____, and then and there submit to be examined on oath or affirmation on behalf of the _____ touching the matters referred to the said arbitrator.

And it is further ordered that the said _____ do at the time and place aforesaid produce and deliver to the said arbitrator the papers, documents, and writings hereafter mentioned, that is to say *[specify documents to be produced]*.

Dated the _____ day of _____, 18 ____.

No. 27.

ORDER CHARGING STOCK—NISI.

[Heading as in Form 1.]

Upon hearing _____, and upon reading the affidavit of _____, filed the _____ day of _____, 18 __, whereby it appears

It is ordered that unless sufficient cause be shown to the contrary before _____ on _____ day, the _____ day of _____, 18 __, at _____ o'clock in the forenoon, the

RULES OF THE SUPREME COURT.

Appx. K. defendant's interest in the
Nos. 27— so standing as aforesaid shall, and that it in the meantime do, stand
30. charged with the payment of the above-mentioned amount due on
the said judgment.

Dated the _____ day of _____, 18 .

No. 28.

ORDER CHARGING STOCK—ABSOLUTE.

[Heading as in Form 1.]

Upon hearing _____, and upon reading the affidavit of
_____, filed the _____ day of _____, 18
and an order nisi made herein on the
day of _____, 18 , reciting the affidavit of
whereby it appeared

It is ordered that the defendant's interest in the
so standing as aforesaid stand charged with the payment of the
above-mentioned amount due on the said judgment.

Dated the _____ day of _____, 18 .

No. 29.

CHARGING ORDER. SOLICITOR'S COSTS.

[Heading as in Form 1.]

Upon hearing
and upon reading the affidavit of _____, filed the
day of _____, 18 , and

It is ordered that the said _____, the solicitor for the
in this action, shall have a charge upon
for his costs, charges, and expenses of and in reference to the
action.

Dated the _____ day of _____, 18 .

No. 30.

ORDER TO REMOVE JUDGMENT FROM COUNTY COURT.

18 . [Here put the letter and number.]

In the High Court of Justice.

Division.

Y.

Master in Chambers.

In the matter of a plaint in the County Court of
holden at _____, wherein _____, plaintiff,

and
_____, defendant.

Upon reading the affidavit of _____, filed the
day of _____, 18 , and _____, and the certified copy
of the judgment in the plaint above mentioned,

It is ordered that a writ of certiorari issue to remove the said
judgment from the above-named County Court into the
Division of the High Court of Justice.

Dated the _____ day of _____, 18 .

APPENDIX OF FORMS.

No. 31.

ORDER FOR ARREST (CAPIAS) UNDER DEBTORS' ACT.

[Heading as in Form 1.]

Appx. K.
Nos. 31—
33.

Upon hearing
and upon reading the affidavit of _____, filed the
day of _____, 18____, and

It is ordered that the defendant _____ be arrested and im-
prisoned for the term of _____ from the date of his arrest,
including the day of such date, unless and until he shall sooner
deposit in Court the sum of £ _____, or give to the plaintiff
a bond executed by him and two sufficient sureties in the penalty of
£ _____, or some other security satisfactory to the plaintiff,
that

And it is further ordered that the sheriff of _____ do
within one calendar month from the date hereof, including the day
of such date, and not afterwards, take the defendant for the pur-
pose aforesaid, if he shall be found in the said sheriff's bailiwick.

Dated the _____ day of _____, 18____.

No. 32.

ORDER OF REFERENCE UNDER S. 56 OF THE SUPREME COURT OF JUDICATURE ACT, 1873.

[Heading as in Form 1.]

Upon hearing _____, and upon reading the affidavit of
_____, filed the _____ day of _____, 18____, and

It is ordered that the following question arising in this action,
namely, _____ be referred for inquiry and report to
under section 56 of the Supreme Court of Judicature Act, 1873, and
that the costs of this application be

Dated the _____ day of _____, 18____.

No. 33.

ORDER OF REFERENCE UNDER S. 57 OF THE SUPREME COURT OF JUDICATURE ACT, 1873.

[Heading as in Form 1.]

Upon hearing _____, and upon reading the affidavit of
_____, filed the _____ day of _____, 18____, and

It is ordered that the [*state whether all or some, and if so which, of
the questions are to be tried*] in this action be tried by _____,
who shall have all the powers as to certifying and amending of a
judge of the High Court of Justice, and shall make his report of
and concerning the matters ordered to be tried as aforesaid pursuant
to the statute, [*or direct judgment to be entered and otherwise deal
with the whole action pursuant to Order 36, Rule 50*].

And it is further ordered that the said referee, may if he think fit,
examine the parties to this action, and their respective witnesses,
upon oath or affirmation, and that the said parties shall produce
before the said referee all books, deeds, papers, and writings in their
or either of their custody or power relating to the matters so ordered
to be tried.

RULES OF THE SUPREME COURT.

Appx. K.
Nos. 13—
85.

And it is further ordered that neither the plaintiff nor the defendant shall bring or prosecute any action against the said referee, or against each other, of or concerning the matters so ordered to be tried, and that if either party by affected delay or otherwise wilfully prevent the said referee from making his report, he or they shall pay such costs to the other as the Court, or a judge, may think reasonable and just.

And it is further ordered, that in the event of the said referee declining to act, or dying before he has made his report, the said parties may, or if they cannot agree, one of the judges of the High Court may, upon application by either party, appoint a new referee.

And it is ordered that the costs of this application be

Dated the day of , 18 .

No. 84.

ORDER OF REFERENCE TO MASTER.

[Heading as in Form 1.]

Upon hearing _____, and upon reading the affidavit of _____, filed the _____ day of _____, 18____, and

It is ordered that this action [or the matters of account in this action, or the following questions in this action being matters of account, namely, *stating them*] be referred to the certificate of the master, with all the powers as to certifying and amending of a judge of the High Court of Justice, and that the costs of the and of the reference be in the discretion of the master, and that the costs of this application be .

Dated the 11 day of April, 18 1901.

No. 35.

ORDER FOR EXAMINATION OF WITNESSES BEFORE TRIAL.

[Heading as in Form 1.]

Upon hearing _____, and upon reading the affidavit of _____, filed the _____ day of _____, 18____, and

It is ordered that _____, a witness on behalf of the _____, be examined viva voce (on oath or affirmation) before the master [or before _____, esquire, special examiner], the solicitor or agent giving to the _____ solicitor or agent notice in writing of the time and place where the examination is to take place.

And it is further ordered that the examination so taken be filed in the Central Office of the Supreme Court of Judicature, and that an office copy or copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor or agent of the as to his belief, and that the costs of this application be .

Dated the _____ day of _____, 18__.

APPENDIX OF FORMS.

No. 36.

SHORT ORDER FOR ISSUE OF COMMISSION TO EXAMINE WITNESSES.

Appx. K.
Nos. 36,
37.

[Heading as in Form 1.]

Upon hearing _____, and upon reading the affidavit of _____, filed the _____ day of _____, 18 _____, and

It is ordered that the _____ be at liberty to issue a commission for the examination of witnesses on _____ behalf at _____.

And it is further ordered that the trial of this action be stayed until the return of the said commission, the usual long order to be drawn up, and unless agreed upon by the parties within one week, to be settled by the master [or as the case may be], and that the costs of this application be _____.

Dated the _____ day of _____, 18 _____.

No. 37.

LONG ORDER FOR COMMISSION TO EXAMINE WITNESSES.

[Heading as in Form 1.]

Upon hearing _____, and upon reading the affidavit of _____, filed the _____ day of _____, 18 _____, and

It is ordered as follows:—

1. A commission may issue directed to _____, of _____, and _____, of _____, commissioners named by and on behalf of the _____, and to _____, of _____, and _____, commissioners named by and on behalf of the _____ for the examination upon interrogatories and vivâ voce of witnesses on behalf of the said _____ and _____ respectively at _____ aforesaid before the said commissioners, or any two of them, so that one commissioner only on each side be present and act at the examination.

2. Both the said _____ and _____ shall be at liberty to examine upon interrogatories and vivâ voce upon the subject-matter thereof or arising out of the answers thereto such witnesses as may be produced on their behalf, with liberty to the other party to cross-examine the said witnesses upon cross interrogatories and vivâ voce, the party producing the witness for examination being at liberty to re-examine him vivâ voce; and all such additional vivâ voce questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and, with the answers thereto, returned with the said commission.

3. Within _____ days from the date of this order the solicitors or agents of the said _____ and _____ shall exchange the interrogatories they propose to administer to their respective witnesses, and shall also within _____ days from the exchange of such interrogatories, exchange copies of the cross-interrogatories intended to be administered to the said witnesses.

4. _____ days previously to the sending out of the said commission, the solicitor _____ of the said _____ shall give to the solicitor _____ of the said _____ notice in

RULES OF THE SUPREME COURT.

**Appx. K.
No. 37.**

writing of the mail or other conveyance by which the commission is to be sent out.

5. days previously to the examination of any witness on behalf of the said or respectively, notice in writing signed by any one of the commissioners of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination, and the names of the witnesses intended to be examined, shall be given to the commissioners of the other party by delivering the notice to them personally, or by leaving it at their usual place of abode or business, and if the commissioners of that party neglect to attend pursuant to the notice, then one of the commissioners of the party on whose behalf the notice is given shall be at liberty to proceed with and take the examination of the witness or witnesses ex parte, and adjourn any meeting or meetings, or continue the same from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

6. In the event of any witness on his examination, cross-examination, or re-examination, producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present to be a true and correct copy, or extracts shall be annexed to the witnesses' deposition.

7. Each witness to be examined under the commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the said commissioners or commissioner.

8. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and vivâ voce questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters, to be nominated by the commissioners or commissioner, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness or witnesses, and his and their answers thereto.

9. The depositions to be taken under and by virtue of the said commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken such depositions.

10. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof, or extracts therefrom, shall be sent to the Senior Master of the Supreme Court of Judicature on or before the day of , or such further or other day as may be ordered, enclosed in a cover under the seal or seals of the said commissioners or commissioner, and office copies thereof may be given in evidence on the trial of this action by and on behalf of the said and respectively, saving all just exceptions, without any other proof of the absence from this country of the witness or witnesses therein named, than an affidavit of the solicitor or agent of the said or respectively, as to his belief of the

APPENDIX OF FORMS.

11. The trial of this cause is to be stayed until the return of the said commission. **Appx. K.**

12. The costs of this order, and of the commission to be issued in pursuance hereof, and of the interrogatories, cross-interrogatories, and depositions to be taken thereunder, together with any such document, copy, or extract as aforesaid, and official copies thereof, and all other costs incidental thereto, shall be

**Nos. 37—
39.**

Dated the day of , 18 .

No. 38.

ORDER FOR EXAMINATION OF JUDGMENT DEBTOR.

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Division.

Between

, Judgment Creditor,
and

, Judgment Debtor.

Upon hearing

and upon reading the affidavit of

, filed the

day of

, 18 ,

and

It is ordered that the above-named judgment debtor attend and be orally examined as to whether any and what debts are owing to him, before in chambers, at such time and place as he may appoint, and that the said judgment debtor produce his books [*or as may be ordered*] before the said at the time of the examination, and that the costs of this application be

Dated the day of , 18 .

No. 39.

GARNISHEE ORDER (ATTACHING DEBT).

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Division.

in Chambers.

Between

, Judgment Creditor,
and

, Judgment Debtor,
Garnishee.

Upon hearing

, and upon reading the affidavit

of , filed the

day of

, 18 ,

and

It is ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of , 18 , for the sum of £ , on which judgment the said sum of £ remains due and unpaid.

And it is further ordered that the said garnishee attend the in chambers on day the

day of , 18 , at

o'clock in the

noon, on

RULES OF THE SUPREME COURT.

Appx. K. an application by the said judgment creditor, that the said garnishee
No. 39— pay the debt due from him to the said judgment debtor, or so much
41. thereof as may be sufficient to satisfy the judgment.
And that the costs of this application be
Dated the day of , 18 .

No. 40.

GARNISHEE ORDER (ABSOLUTE).

18 . [*Here put the letter and number.*]
In the High Court of Justice.
Division.
in Chambers.

Between , Judgment Creditor,
and
 , Judgment Debtor,
Garnishee.

Upon hearing , and upon reading the affidavit of
 , filed the day of , 18 , and
whereby it was ordered that all debts owing or accruing due from
the above-named garnishee to the above-named judgment debtor
should be attached to answer a judgment recovered against the said
judgment debtor by the above-named judgment creditor in the
High Court of Justice on the day of , 18 ,
for the sum of £ , on which judgment the said sum of
£ remained due and unpaid,

It is ordered that the said garnishee do forthwith pay the said
judgment creditor the debt due from him to the said judgment
debtor (or so much thereof as may be sufficient to satisfy the
judgment debt), and that in default thereof execution may issue
for the same, and that the costs of this application be

Dated the day of , 18 .

No. 41.

ORDER ON CLIENT'S APPLICATION TO TAX SOLICITOR'S BILL OF COSTS.

18 . [*Here put the letter and number.*]
In the High Court of Justice.
Division.
in Chambers.

In the matter of the taxation of costs, and in the matter of
 , gentleman, one of the solicitors of the Supreme Court.

It is ordered that the bill of fees, charges, and disbursements
delivered to the applicant by the above-named solicitor be referred
to the taxing officer to be taxed, and that the said solicitor give
credit for all sums of money by him received of or on account of the
applicant, and that he refund what, if anything, he may on such
taxation appear to have been overpaid.

And it is further ordered that if the said solicitor attends on the
taxation, the taxing officer tax the costs of the reference, and certify
what shall be found due to or from either party in respect of the
bill and demand and of the costs of the reference, to be charged if

APPENDIX OF FORMS.

payable) according to the event of the taxation, pursuant to the statute.

**Appx. K.
Nos. 41—
43.**

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the reference.

And it is further ordered that upon payment by the applicant of what (if anything) may appear to be due to the said solicitor the said solicitor do (if required) deliver up to the applicant, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the applicant.

And it is ordered that the costs of this application be

Dated the day of , 18 .

No. 42.

ORDER ON SOLICITOR'S APPLICATION TO TAX BILL OF COSTS.

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Division.

in Chambers.

In the matter of the taxation of costs, and in the matter of gentleman, one of the solicitors of the Supreme Court.

Upon hearing _____ and upon reading the affidavit of
 _____, filed the _____ day of _____ 18 _____, and

It is ordered that the above-named solicitor's bill of fees, charges, and disbursements, delivered to (hereinafter called the said client) be referred to the taxing officer to be taxed, and that the said solicitor give credit for all sums of money by him received from or on account of the said client, and that he refund what (if anything) he may on such taxation appear to have been overpaid.

And it is further ordered that the taxing officer tax the costs of the reference and certify what shall be found due to or from either party in respect of the bill and demand and of the costs of the reference, to be paid according to the event of the taxation, pursuant to the statute.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the reference.

And it is further ordered that upon payment by the said client of what (if anything) may appear to be due to the said solicitor the said solicitor do (if required) deliver to the said client, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody, or power, belonging to the said client.

And it is ordered that the costs of this application be

Dated the day of , 18 .

No. 43.

ORDER TO TAX AFTER ACTION BROUGHT.

[Heading as in Form 1.]

Upon hearing _____, and upon reading the affidavit
of _____, filed the _____ day of _____, 18 _____,
and _____

RULES OF THE SUPREME COURT.

Appx. K. It is ordered that the plaintiff's bill of costs, charges, and disbursements delivered to the defendant, for the recovery of which this action is brought, be referred to the taxing officer to be taxed, and that the plaintiff give credit of the time of taxation for all sums of money by him received from or on account of the defendant.

**Nos. 43—
46.**

And it is further ordered that the taxing officer tax the costs of the reference, and certify what upon such reference shall be found due to or from either party in respect of the bill and demand, and of the costs of the reference, pursuant to the statute.

And it is further ordered that the plaintiff do not prosecute this action touching the demand pending the reference.

And it is further ordered that upon payment of what (if anything) may appear to be due to the plaintiff, together with the costs of this action (which are to be also taxed and paid), all further proceedings therein be stayed, and that the costs of this application be

Dated the _____ day of _____, 18 .

No. 44.

ORDER TO TRY ACTION IN COUNTY COURT.

[Heading as in Form 1.]

Upon hearing _____, and upon reading the affidavit of _____, filed the _____ day of _____, 18 ,
and

It is ordered that this action be tried before the County Court of _____, holden at _____, and that the costs of this application be

Dated the _____ day of _____, 18 .

No. 45.

ORDER TO GIVE SECURITY OR TRY ACTION IN COUNTY COURT.

[Heading as in Form 1.]

Upon hearing _____, and upon reading the affidavit of _____, filed the _____ day of _____, 18 ,
and

It is ordered that unless the plaintiff within _____ give full security for the defendant's costs to the satisfaction of the master [or as the case may be], this action be remitted for trial before the County Court of _____, holden at _____, and that the costs of this application be

Dated the _____ day of _____, 18 .

No. 46.

ORDER FOR EXAMINATION TOUCHING MEANS.

18 . [Here put the letter and number.]
In the High Court of Justice.
Division.

Master in Chambers.

Between _____, Judgment Creditor,
and _____,
Judgment Debtor.

APPENDIX OF FORMS.

Upon hearing _____, and upon reading the affidavit of _____ **Appx. K.**
 _____, filed the _____ day of _____, 18 _____, **Nos. 46—**
48.

and
 It is ordered that the above-named _____ do attend before
 the master on the _____ day of _____ next, at
 _____ in the _____ noon, to be examined upon oath
 touching his means of paying the judgment debt, and that the costs
 of this application be _____

Dated the _____ day of _____, 18 _____.

No. 47.

ORDER FOR PAYMENT OF JUDGMENT DEBT BY INSTALMENTS.

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Division.

Master in Chambers.

Between _____, Judgment Creditor,
 _____ and
 _____, Judgment Debtor.

Upon hearing _____, and upon reading the affidavit of _____
 _____, filed the _____ day of _____, 18 _____,
 and

It is ordered that the above-named judgment debtor do pay to
 the above-named judgment creditor the sum of _____, together
 with interest thereon at the rate of £4 per centum per annum from
 the _____ day of _____, 18 _____, the date of the judgment,
 and also £ _____ the costs of this application in manner fol-
 lowing; namely [*here describe the mode in which the payment is to be*
made].

Dated the _____ day of _____, 18 _____.

No. 48.

ORDER FOR COMMITTAL OF JUDGMENT DEBTOR.

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Division.

Judge in Chambers.

Between _____, Judgment Creditor,
 _____ and
 _____, Judgment Debtor.

Upon hearing _____, and upon reading the affidavit of _____
 _____, filed the _____ day of _____, 18 _____,
 and

It is ordered that the above-named judgment debtor be, for de-
 fault in payment of the debt hereinafter mentioned, committed to
 prison for the term of _____ from the date of his arrest, in-
 cluding the day of such date, or until he shall pay £ _____,
 being the amount due from him in pursuance of a judgment [*or*
order] of the High Court of Justice, bearing date the
 day of _____, 18 _____, together with interest thereon at £4 per
 cent. per annum from the aforesaid date, and £1 6s. 8d. for costs of
 this order, and sheriff's fees for the execution thereof.

RULES OF THE SUPREME COURT.

Appx. K. And it is further ordered that the sheriff take the said debtor for
Nos. 48— the purpose aforesaid if he is found within his bailiwick.
50. And it is ordered that the costs of this application be
 ----- Dated the day of , 18 .

No. 49.

ORDER FOR COMMITTAL OF JUDGMENT DEBTOR ON NON-PAYMENT OF INSTALMENT.

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Division.

Judge in Chambers.

Between _____, Judgment Creditor,
and _____

, Judgment Debtor.

Upon hearing _____, and upon reading the affidavit of _____,
 _____, filed the _____ day of _____, 18 _____.

and

It is ordered that the above-named judgment debtor be, for default in payment of £ , being the amount of the [first] instalment of the judgment debt of £ in this action directed to be paid pursuant to the order of , bearing date the day of , 18 , committed to prison for the term of from the date of his arrest, including the day of such date, or until he shall pay the said instalment, together with 13s. 4d., the costs of this order, and sheriff's fees for the execution thereof. And it is further ordered that the sheriff of take the said debtor for the purpose aforesaid if he is found in his bailiwick.

And it is ordered that the costs of this application be

Dated the day of , 18 .

No. 50.

INTERPLEADER ORDER, No. 1.

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Division.

in Chambers.

Between _____, Plaintiff,
and _____

, Defendant,

and between

, Claimant,

and

, Respondent.

Upon hearing _____, and upon reading the affidavit of _____, filed the _____ day of _____, 18 _____,

and

It is ordered that the claimant be barred, that no action be brought against the above-named [sheriff] , and that the costs of this application be .

Dated the _____ day of _____, 18__.

APPENDIX OF FORMS.

No. 51.

Appx. K.
Nos. 51, 52.

INTERPLEADER ORDER, No. 2.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

in Chambers.

Between , Plaintiff,
and
, Defendant,
and
, Claimant.

Upon hearing
and upon reading the affidavit of , filed the
day of , 18 , and

It is ordered that the above-named claimant be substituted as
defendant in this action in lieu of the present defendant, and that
the costs of this application be

Dated the day of , 18 .

No. 52.

INTERPLEADER ORDER, No. 3.

18 . [*Here put the letter and number.*]

In the High Court of Justice.
Division.

in Chambers.

Between , Plaintiff,
and
, Defendant.
And between , Claimant,
and the said
execution creditor, and
, the sheriff
of , Respondents.

Upon hearing
and upon reading the affidavit of , filed the
day of , 18 , and

It is ordered that the said sheriff proceed to sell the goods seized by
him under the writ of fieri facias issued herein, and pay the net
proceeds of the sale, after deducting the expenses thereof, into Court
in this cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of
an issue in the High Court of Justice, in which the said claimant
shall be the plaintiff and the said execution creditor shall be the de-
fendant, and that the question to be tried shall be whether at the
time of the seizure by the sheriff the goods seized were the property
of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered
by the plaintiff therein within from this date, and be
returned by the defendant therein within days, and be
tried at

And it is further ordered that the question of costs and all further
questions be reserved until the trial of the said issue, and that no

RULES OF THE SUPREME COURT.

Appx. K. action shall be brought against the said sheriff for the seizure of the
No. 52— said goods.
54. Dated the _____ day of _____, 18 ____.

No. 53.

INTERPLEADER ORDER, No. 4.

[Heading as in Form 52.]

Upon hearing, &c.

It is ordered that upon payment of the sum of £ _____ into Court by the said claimant within _____ from this date, or upon his giving within the same time security to the satisfaction of the master *[or as the case may be]* for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment to the above-named sheriff of the possession money from this date, the said sheriff do withdraw from the possession of the goods seized by him under the writ of *fieri facias* herein.

And it is further ordered that unless such payment be made or security given within the time aforesaid the said sheriff proceed to sell the said goods, and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed, &c.

And it is further ordered that this issue, &c.

And it is further ordered that the question of costs, &c.

Dated the _____ day of _____, 18 ____.

No. 54.

INTERPLEADER ORDER, No. 5.

[Heading as in Form 52.]

Upon hearing, &c.

It is ordered that upon payment of the sum of £ _____ into Court by the said claimant, or upon his giving security to the satisfaction of the master *[or as the case may be]* for the payment of the same amount by the claimant according to the directions of any order to be made herein, the above-named sheriff withdraw from the possession of the goods seized by him under the writ of *fieri facias* issued herein.

And it is further ordered that in the meantime, and until such payment made or security given, the sheriff continue in possession of the goods, and the claimant pay possession money for the time he so continues, unless the claimant desire the goods to be sold by the sheriff, in which case the sheriff is to sell them and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed, &c.

And it is further ordered that this issue, &c.

And it is further ordered that the question of costs, &c.

Dated the _____ day of _____, 18 ____.

APPENDIX OF FORMS.

No. 55.

INTERPLEADER ORDER, No. 6.

[*Heading as in Form 52.*]

Appx. K.
Nos. 55—
58.

The claimant and execution creditor having requested and consented that the merits of the claim made by the claimant be disposed of and determined in a summary manner, now upon hearing _____, and upon reading the affidavit of _____, filed the _____ day of _____, 18____, and

It is ordered that

And that the costs of this application be

Dated the _____ day of _____, 18____.

No. 56.

INTERPLEADER ORDER, No. 7.

[*Heading as in Form 52.*]

Upon hearing _____, and upon reading the affidavit of _____, filed the _____ day of _____, 18____, and

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of fieri facias issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

And it is further ordered that out of the proceeds of the said sale (after deducting the expenses thereof, and rent, if any), the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be

Dated the _____ day of _____, 18____.

No. 57.

ORDER DISMISSING SUMMONS (GENERALLY).

[*Heading as in Form 1.*]

Upon hearing _____, and upon reading the affidavit of _____, filed the _____ day of _____, 18____, and

It is ordered that the application of _____ be dismissed* with costs to be taxed and paid by the _____ to the _____ [or, and that the costs of and occasioned by this application be the _____'s in any event].

Dated the _____ day of _____, 18____.

No. 58.

SUMMONS FOR ENTRY OF SATISFACTION ON A REGISTERED BILL OF SALE.

In the High Court of Justice.

In the matter of a bill of sale by _____ to _____ dated the _____ day of _____, 18____, and registered on the _____ day of _____, 18____.

RULES OF THE SUPREME COURT.

Appx. K. Let all parties concerned attend the Registrar of Bills of Sale at
No. 68. the Central Office, Royal Courts of Justice, London, on the
day of , 18 , at o'clock
the noon, on the hearing of an application on the part
of that satisfaction be entered on the above mentioned
bill of sale.
Dated the day of , 18 .
This summons was taken out by , of .
To .

APPENDIX L.

Appx. L.
Nos. 1, 2.

CHANCERY DIVISION.

No. 1.

Summons by Chief Clerk.

In the High Court of Justice.

Chancery Division.

Mr. Justice

In the matter of the estate of A. B., late of , in the
county of , deceased.

Or

Between C. D., Petitioner,
and

E. F., Defendant.

The defendant E. F. [or G. H., of, &c.] is hereby summoned to
attend at the chambers of Mr. Justice , at the Royal
Courts of Justice, on the day of
at o'clock in the noon, to be examined [or
be examined as a witness] on the part of the , for the
purpose of the proceedings directed by Mr. Justice
be taken before me,

Dated this day of , 18 .

X. Y.,

Chief Clerk.

This summons was taken out by of ,
the county of , Solicitors for .

No. 2.

Form of Advertisement for Claimants not being Creditors.

Pursuant to a judgment [or order] of the Chancery Division of
the High Court of Justice made in [the matter of the estate of
, and in] an action by against
the persons claiming to be next of kin to [or the heir of, as the case
may be] , late of , in the county of
who died in or about the month of , are by

APPENDIX OF FORMS.

their solicitors, on or before the day of , to **Appx. L.**
 come in and prove their claims at the chambers of Mr. Justice **Nos. 2—**
 , at the Royal Courts of Justice, or in default thereof **4.**
 they will be peremptorily excluded from the benefit of the said
 judgment [or order]. The day of , at
 o'clock in the noon, at the said
 chambers, is appointed for hearing and adjudicating upon the
 claims.

Dated the day of , 18 .
 A.B.,
 Chief Clerk.

No. 3.

Form of Advertisement for Creditors.

Pursuant to a judgment [or an order] of the Chancery Division of
 the High Court of Justice made in [the matter of the estate of A.B.,
 and in] an action S. against P., the creditors of A.B., late of
 , in the county of , who died in or about
 the month of , 18 , are on or before the
 day of , 18 , to send by post, prepaid, to
 E.F., of , the solicitor of the defendant C.D., the
 executor [or administrator] of the deceased [or as may be directed],
 their Christian and surname, addresses and descriptions, the full
 particulars of their claims, a statement of their accounts, and the
 nature of the securities (if any) held by them, or in default thereof,
 they will be peremptorily excluded from the benefit of the said judg-
 ment [or order]. Every creditor holding any security is to produce the
 same before Mr. Justice at his chambers, the Royal Courts
 of Justice, London, on the day of , 18 ,
 at o'clock in the noon, being the time
 appointed for adjudication on the claims.

Dated this day of , 18 .
 G.H.,
 Chief Clerk.

No. 4.

Notice to Creditor to Produce Documents.

[Short Title.]

You are hereby required to produce in support of the claim sent
 in by you against the estate of A.B., deceased [describe the document
 required to be produced], before Mr. Justice , at his
 chambers at the Royal Courts of Justice, London, on the
 day of , 18 , at o'clock in the
 noon.

Dated this day of , 18 .

G.R., of, &c., solicitor for plaintiff [or defendant, or as the case
 may be].

To Mr. S.T.

RULES OF THE SUPREME COURT.

Appx. L.
Nos. 5, 6.

No. 5.

Affidavit of Executor or Administrator as to Claims of Creditors.

In the High Court of Justice.

Chancery Division.

Mr. Justice

[Title.]

We, C. D., of, &c., the above-named plaintiff [or defendant, *as may be*], the executor [or administrator] of A. B., late of
in the county of , deceased, and E. F., of, &c., solicitor,
severally make oath and say as follows:—

I, the said E. F., for myself, say as follows:—

1. I have in the paper writing now produced, and shown to me, and marked A., set forth a list of all the claims, the particulars of which have been sent in to me by persons claiming to be creditors of the said A. B., deceased, pursuant to the advertisement issued in that behalf, dated the day of , 18 .

And I, the said C. D., for myself, say as follows:—

2. I have examined the particulars of the several claims mentioned in the paper writing now produced, and shown to me, and marked A., and I have compared the same with the books, accounts, and documents of the said A. B. [or as may be, and state any other inquiries or investigations made], in order to ascertain, so far as I am able, to which of such claims the estate of the said A. B. is justly liable.

3. From such examination [and state any other reasons] I am of opinion and verily believe, that the estate of the said A. B. is justly liable to the amounts set forth in the sixth column of the first part of the said paper writing, marked A., and to the best of my knowledge and belief, such several amounts are justly due from the estate of the said A. B., and proper to be allowed to the respective claimants named in the said schedule.

4. I am of opinion that the estate of the said A. B. is not justly liable to the claims set forth in the second part of the said paper writing, marked A., and that the same ought not to be allowed without proof by the respective claimants [or, I am not able to state whether the estate of the said A. B. is justly liable to the claims set forth in the second part of the said paper writing, marked A., or whether such claims, or any parts thereof, are proper to be allowed without further evidence].

5. Except as hereinbefore mentioned, there are not, to the best of my knowledge, information and belief, any other claims against the estate of the said A. B.

Sworn, &c.

No. 6.

Exhibit referred to in Affidavit No. 5.

A.

[Short Title.]

List of claims, the particulars of which have been sent in to E. F., the solicitor of the plaintiff [or defendant, or as may be], by persons claiming to be creditors of A. B., deceased, pursuant to the adver-

APPENDIX OF FORMS.

Assignment issued in that behalf, dated the day of , Appx. L.
18 . Nos. 6, 7.

This paper writing marked A. was produced and shown to _____, and is the same as is referred to in his affidavit sworn before me this day of _____, 18 ____.

W. B., &c.

FIRST PART.—Claims proper to be allowed without further evidence.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount claimed.	Amount proper to be allowed.
				£ s. d.	£ s. d.

SECOND PART.—Claims which ought to be proved by the Claimants.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount claimed.
				£ s. d.

No. 7.

Notice to Creditor of Allowance of Claim.

[Short Title.]

The claim sent in by you against the estate of *A. B.*, deceased, has been allowed at the sum of £ , with interest thereon at £ per cent. per annum from the day of , 18 , and £ for costs.

[If part only allowed, add, If you claim to have a larger sum allowed, you are hereby required to prove such further claim, and you are to file such affidavit as you may be advised in support of your claim, and give notice thereof to me on or before the day of , 18 , next, and to attend by your solicitor at the chambers of Mr. Justice at the Royal Courts of Justice on day of , 18 , at o'clock in the noon, being the time appointed for adjudicating on the claim.

Dated this day of , 18 .

G.R., of, &c., Solicitor for the plaintiff
[or defendant, or as may be].

To Mr. *P.R.*

RULES OF THE SUPREME COURT.

Appx. L.
No. 12.

No. 12.

*Account of Personal Estate, being Account A. referred to in
Form No. 11.*

A.

In the High Court of Justice.
Chancery Division.
Mr. Justice

[Title.]

**This account marked A. was produced and shown to A. B., C. D.
and E. F., and is the account referred to in their affidavit sworn the
day of**

**Before me [to be signed here by Commissioner or officer to
whom the affidavit is sworn.]**

RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account received.	Amount received.
	18 .			£ s d
1		.....	Found in house.	
2		Evans and Co. .	Balance at bankers.	
3		.....	Half year's dividend on 2,000 <i>l.</i> 3 <i>l.</i> per cent. annuities due.	
4		John James . .	Bond debt of 300 <i>l.</i> and interest from to	
5		Samuel Jones .	Bond debt of 300 <i>l.</i> and interest from to	
6		James Evans .	Half year's rent of lease- hold house due .	
7		William Williams	Produce of sale of the above leasehold house.	

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
	18 .			£ s d
1		James Price . .	Undertaker's bill for funeral.	
2		Messrs. A. & B.	Expenses of probate.	
3		John George .	A debt due to him for medical attendance.	
4		James Price . .	Bond debt of 1,000 <i>l.</i> and 25 <i>l.</i> for interest there- on from to .	

APPENDIX OF FORMS.

No. 13.

Account of Rents and Profits, being the Account B. referred to in

No. 11.

B.

APPX.
No. 11

*In the High Court of Justice,
Chancery Division.
Mr. Justice*

[Title.]

This account marked B. was produced and shown to A. B., C. D.,
and E. F., and is the account referred to in their affidavit sworn this
day of
Before me [to be signed here by Commissioner or officer before
whom affidavit sworn.]

RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account and in respect of what part of the Estate received, and when due.	Amount received.
1	18 .	John James	H-11	
2				

Appx. C
s. 4.
Nos. 9—

Against
sharehold
for allot-
ment
money &
calls by
company
under 2
26 Vict.
c. 84.

Appx. L
No. 12

James J. Evans & Co.

In the High Court of Justice
Chancery Division
Mr. Justice

The said James J. Evans & Co.
vs. E. J. Evans & Co.
Defendants
Reference made to the account
of the said James J. Evans & Co.

RECEIPTS

No.	Particulars	Sum
1	18 .	
2	Evans and Co.	£ 100
3	John James	£ 50
4	Samuel Jones	£ 25
5	James Evans	£ 10
6	William Williams	£ 5
7		

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DISBURSEMENTS

No. of Item	Date when paid or allowed	Names of Persons to whom paid or allowed	For what
1	18 .	James Price . .	Undertaker's funeral.
2		Messrs. A. & B.	Expenses of . .
3		John George . .	A debt due . .
4		James Price . .	medical att . .
			Bond debt of . .
			25% for inter . .
			on from . .

APPENDIX OF FORMS.

No. 13.

Appx. L.
No. 13.

Account of Rents and Profits, being the Account B. referred to in
No. 11.

B.

In the High Court of Justice.
Chancery Division.
Mr. Justice

[Title.]

This account marked B. was produced and shown to A. B., C. D.,
and E. F., and is the account referred to in their affidavit sworn this
day of
Before me [to be signed here by Commissioner or officer before
whom affidavit sworn.]

RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account and in respect of what part of the Estate received, and when due.	Amount received.
1	18 .	John James .	Half year's rent for farm in parish of , due .	£ s. d.
2		Thomas James .	One quarter year's rent of house at , due .	
3		John James .	Same as No. 1, due .	

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
1	18 .	Sun Insurance Office . . .	One year's insurance against fire, due .	£ s. d.
2		Thomas Carpenter . . .	Repairs at John James' farm.	
3		James Francis .	Income Tax, half year due 10th October.	

No. 14.
Receiver's Account.
[TITLE]

(To Accord with the Order.)

The [] Account of *A. B.* the Receiver appointed in this cause [*or* pursuant to] an order made in this cause, dated the day of ,
to receive the rents and profits of the Real Estate, and to collect and get in the out-
standing Personal Estate of C. D., the testator [or, intestate] in this cause, named
from the day of to the day of .

REAL ESTATE—RECEIPTS.

No. of Item.	Date when received.	Tenants' Names.	Description of Premises.	Annual Rent.		Arrears due at .		Amount due at .		Amount received.		Arrears remaining due.		Observations.
				£	s. d.	£	s. d.	£	s. d.	£	s. d.	£	s. d.	
1		John Jones	Home Farm in the Parish of Norton, in the County of Oxford.											
2		Thomas Jones	House at Norton, aforesaid.											

APPENDIX OF FORMS.

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE.

No. of Item.	Date of Payment or Allowance.	Names of Persons to whom paid or allowed.	For what Purposes paid or allowed.	Amount.	
				£	s. d.
1		Sun Fire Office .	One year's insurance of, due		
2		Thomas Carpenter .	Bill for repairs at house let to Thomas Jones .		
3		James Francis .	Allowance for a half year's Income Tax, due		
			Total payments . £		

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RECEIPTS ON ACCOUNT OF PERSONAL ESTATE. PAYMENTS AND ALLOWANCES ON ACCOUNT OF PERSONAL ESTATE.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Acco received.	No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what Pur- poses paid or allowed.	Amount paid or allowed.

Appx. L.
No. 14.

RULES OF THE SUPREME COURT.

**Appx. L,
Nos. 14,
15.**

SUMMARY.

		£	s.	d.	£	s.	d.
Amount of balance due from receiver on account of real estate on last account . . . . .	.	.	.	.	"	"
Amount of receipts on the above account of real estate . . . . .	.	.	.	.	"	"
	£	s.	d.				
Balance of last account paid into Court	"	"					
Amount of payments and allowances on the above account of real estate	"	"					
Amount of receiver's costs of passing this account as to real estate	"	"					

Balance due from the receiver on account of real estate £

Amount of balance due from receiver on last account of personal estate . . . . .	.	.	.	"	"
Amount of receipts on the above account of personal estate . . . . .	.	.	.	"	"
	£	s.	d.			
Balance of last account paid into Court	"	"				
Amount of payments and allowances on the above account of personal estate	"	"				
Amount of receiver's costs of passing this account as to personal estate	"	"				

Balance due from the receiver on account of personal estate £

No. 15.

Ordinary Conditions of Sale.

Conditions of Sale.

- 1. No person is to advance less than £ at each bidding.
- 2. The sale is subject to a reserved bidding for each lot which has been fixed by the judge to whom this cause is assigned.
- 3. Each purchaser is at the time of sale to subscribe his name and address to his bidding and the abstract of title, and all written notices and communications and summonses are to be deemed duly delivered to and served upon the purchaser by being left for him at such address, unless or until he is represented by a solicitor.

APPENDIX OF FORMS.

4. Each purchaser is at the time of sale to pay a deposit of £ per cent. on the amount of his purchase money to , the person appointed by the said judge to receive the same. Appx. L.
No. 15.
5. The chief clerk of the said judge will after the sale proceed to certify the result, and the day of at of the clock noon is appointed as the time at which the purchasers may, if they think fit, attend by their solicitors at the chambers of the said judge at the Royal Courts of Justice, London, to settle such certificate. The certificate will then be settled, and will in due course be signed and filed, and become binding without further notice or expense to the purchasers.
6. The vendor is within days after such certificate has become binding to deliver to each purchaser, or his solicitor, an abstract of the title to the lot or lots purchased by him, subject to the stipulations contained in these conditions. And each purchaser is, within four days after the actual delivery of the abstract, to deliver at the office of , solicitor, at , in the county of , a statement in writing of his objections and requisitions (if any) to or on the title as deduced by such abstract, and upon the expiration of such last-mentioned time,—and in this respect time is to be deemed of the essence of the contract,—the title is to be considered as approved of and accepted by such purchaser, subject only to such objections and requisitions, if any.
7. Each purchaser is, in addition to the amount of his bidding at the sale, to pay the value of all timber and timber-like trees, tellers, and pollards, if any, on the lot purchased by him, down to 1s. per stick, inclusive, the amount thereof to be ascertained by a valuation to be made in manner following ; that is to say, each party (vendor and purchaser), or their respective solicitors, is within days after the chief clerk's certificate has become binding to appoint by writing one valuer, and give notice in writing to the other party of such appointment, and the valuers so appointed are to make such valuation, but before they commence their duty they are to appoint an umpire by writing, and the decision of such valuers if they agree, or of such umpire if they disagree, is to be final ; and in case the purchaser shall neglect or refuse to appoint a valuer, and give notice thereof in the manner and within the time above specified, the valuation is to be made by the valuer appointed by the vendor alone, and his valuation is to be final.
8. Each purchaser is under an order for that purpose to be obtained by him, or in case of his neglect by the vendors at the costs of the purchaser, upon application at the chambers of the said judge, to pay the amount of his purchase money (*after deducting the amount paid as a deposit*), *together with the amount of the valuation under the seventh condition, if any*, into Court to the credit of this cause , on or before the said day of , and if the same is not so paid, then the purchaser is to pay interest on his purchase money, including the amount of such valuation at the rate of £ per cent. per annum from the day of to the day on which the same is actually paid. Upon payment of the purchase money in manner aforesaid, the purchaser is to be entitled to possession, or to the rents and profits, as from the day of down to which time all outgoings are to be paid by the vendors.

To be altered if the 4th or 7th condition not inserted

This to be in accordance with the order directing the sale.

Appx. L.
Nos. 15,
16.

9. If any error or mis-statement shall appear to have been in the above particulars, such error or mis-statement is not to annul the sale or entitle the purchaser to be discharged from his purchase but a compensation is to be made to or by the purchaser, in the case may be, and the amount of such compensation is to be settled by the said judge at chambers.

[Add to these such conditions respecting the title and title deeds the conveyancing counsel shall advise to be necessary or proper.]

Lastly. If the purchaser shall not pay his purchase money at the time above specified, or at any other time which may be named in any order for that purpose, and in all other respects perform the conditions, an order may be made by the said judge upon application at chambers for the re-sale of the lot purchased by the purchaser, and for payment by the purchaser of the deficiency, if any, in the price which may be obtained upon such re-sale, and of all costs and expenses occasioned by such default.

No. 16.

Affidavit of Result of Sale.

In the High Court of Justice.
Chancery Division.
Mr. Justice

[Title.]

I, A. B., of &c., auctioneer, the person appointed by the judge to whom this cause is assigned to sell the estates comprised in the particulars hereinafter referred, do make oath and say as follows.

1. I did at the time and place in the lots, and subject to the conditions specified in the particulars and conditions of sale produced and shown to me, and marked with the letter A., put up for sale by auction the estates described in such particulars. The result of such sale is truly set forth in the bidding paper marked with the letter B. now produced and shown to me.

2. The sum set forth in the second column of such bidding paper are the highest sums bid for the respective lots, the numbers which are set forth in the first column opposite to such respective sums, and the persons whose names are subscribed in the third column of such bidding paper as purchasers were respectively the highest bidders for and became the purchasers of the respective lots the numbers whereof are set opposite to such respective names in the said first column of the said bidding paper at the prices or sums set opposite to their respective names in the said second column thereof.

3. The several lots opposite to the numbers of which I have in the third column of the said bidding paper written the words "not sold" were not sold, no person having bid a sum equal to or higher than the reserved bidding fixed by the said judge.

4. No person bid any sum whatever for either of the lots opposite the numbers of which I have in the second column of the said bidding paper written the words "no bidding."

5. The said sale was conducted by me in a fair, open, and honest

APPENDIX OF FORMS.

6. I have received the sums set forth in the fourth column of the Appx. L. schedule hereto as deposits from the respective purchasers whose No. 18, names are set forth in the second column of such schedule opposite 17. the said respective sums, in respect of their said respective purchase moneys, leaving due in respect of the said purchase moneys the respective sums set forth in the fifth column of the said schedule.

The SCHEDULE above referred to.

No. of Lot.	Name of Purchaser.	Amount of Purchase Money.	Amount of Deposit received.	Amount remaining due.

No. 17.
List of Debts allowed.
James v. Jones.
List of Debts.

No. of Entry of Claim.	Names of Creditors.	Addresses.	Amounts allowed for Principal, Interest, and Costs.	Total Amounts Due.
			£ s d.	£ s d.
2	James Allen . .	Boston, in the county of Lincoln, surgeon	100 0 0	
		Interest . . .	4 0 0	
		Costs . . .	2 2 0	
				106 2 0
1	Charles Cohen .	98, Piccadilly, in the county of Middlesex, gentleman, executor of John Thomas . .	67 0 0	
		Interest from 5th October, 1850, at £5 per cent. . .	4 2 0	
		Costs . . .	2 2 0	
				73 4 0
5	John Dennis and Owen Thomas.	16, Fleet Street, London, grocers, and co-partners . .	100 0 0	
		Interest from 16th October, 1852, at £5 per cent. . .	5 0 0	
		Another debt . .	62 0 0	
		Interest . . .	2 10 0	
		Costs . . .	2 4 6	
				171 14 6

RULES OF THE SUPREME COURT.

Appx. L.
Nos. 18, 19.

No. 18.

List of Legacies remaining unpaid.

James v. Jones.

List of Legacies.

Names of Legatees.	Descriptions.	Amounts of Principal and Interest.	Total Amounts Due.
		£ s. d.	£ s. d.
James Oliver .	Son of testator, an infant .	100 0 0	
	Interest	7 5 6	
			107 5 6
Mary Russell .	Of 20, Cheapside, London, widow	50 0 0	
	Interest from 1st January, 1850, the death of testator	4 8 0	
			54 8 0
Jane, the wife of John Williams	Of Lincoln, Esq.	250 0 0	
	Paid in part	50 0 0	
		200 0 0	
	Interest	14 11 0	
			214 11 0
		Total £	

No. 19.

List of Annuities and Arrears due.

List of Annuities.

Names of Annuitants.	Description of Annuitants and Nature of Annuitants.	Amounts of Annuities.	Amounts of Arrears due.
		£ s. d.	£ s. d.
Mary Jones .	Spinster, daughter of testator, during her life.	50 0 0	25 0 0
Maria Williams.	Widow of testator, during her life and widowhood.	200 0 0	
	Arrears due from 7th August, 1882, down to which it has has been paid.	—	300 0 0
	Totals £		£

APPENDIX OF FORMS.

No. 20.

Appx. L.
Nos. 20,
21.

List of Apportionments among Creditors or Legatees.
Apportionment among Creditors (or Legatees).

Names of Creditors (or Legatees).	Addresses.	Amounts before certified to be due and subsequent Interest.	Totals due.	Amounts apportioned.
		£ s. d.	£ s. d.	£ s. d.
John Jones .	20, Cheapside, London, woollen draper.	200 0 0		
	Subsequent interest .	17 10 0		
			217 10 0	57 4 8
Thomas Young and Robert Young.	Braintree, in the county of Essex, executors of William Young, deceased .	200 0 0		
	Subsequent interest .	17 10 0		
			217 10 0	57 4 8
			Total £	

21.

Receiver's Recognisance.

Mr. Justice , the judge to whose Court this cause is attached, has approved of and allowed this recognisance.
Chief Clerk.

, of , of , and
, of ,
Before our Sovereign Lady the Queen in her High Court of Justice personally appearing, do acknowledge themselves, and each of them doth acknowledge himself to owe to and , two of the chief clerks of the Chancery Division, the sum of , to be paid to the said and , or one of them, or the executors or administrators of them, or one of them, and unless they do pay the same, they, the said , do grant, and each of them doth grant for himself, his heirs, executors, and administrators, that the said sum of shall be levied, recovered, and received, of and from them and each of them, and of and from all and singular the manors, messuages, lands, tenements, and hereditaments, goods, and chattels, of them and each of them wheresoever the same shall or may be found. Witness our said Sovereign Lady Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, and so forth, at the Royal Courts of Justice, the day of , 18 .

RULES OF THE SUPREME COURT.

Appx. L. Whereas, by an order of the High Court of Justice made in
Nos. 21, 22. cause wherein are plaintiffs and defendants,
 _____ ants, and dated the _____ day of _____,

It was ordered that a proper person should be appointed to receive [or that upon the above bounden first giving security he should be appointed receiver of] the rents and profits of the real estate, and to collect and get in the outstanding personal estate of _____ in the said order named. And whereas the judge to whom this cause is assigned hath [approved of the same as a proper person to be such receiver and hath] approved of the above bounden _____ and _____ as sureties for the said _____ and hath also approved of the above written recognisance with the underwritten condition as a proper security to be entered into by the said _____ and _____ pursuant to the said order and the general orders of the said Court in the behalf, and in testimony of such approbation the chief clerk of the said judge hath signed an allowance in the margin hereof.

Now the condition of the above written recognisance is such that if the said do and shall duly account for all and every the sum and sums of money which he shall so receive on account the rents and profits of the real estate, and in respect of the personal estate of the said, at such periods as the said shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court or judge hath directed or shall hereafter direct, then the above recognisance shall be void and of none effect, otherwise the same shall be and remain in full force and virtue.

Taken and acknowledged by the above-named, &c.

No. 22.

Affidavit verifying Receiver's Report.

In the High Court of Justice.

Chancery Division.

Mr. Justice

[Title.]

I, _____, of _____, the receiver appointed in the
cause, make oath and say as follows:

1. The account contained from page _____ to page _____ both inclusive, in each of the two several books marked with the several letters A. and B. produced and shown to me at the time of swearing this my affidavit, and purporting to be my account of the rents and profits of the real estate and of the outstanding personal estate of _____, the testator [or intestate] in this cause, from the day of _____, 18____, to the day of _____, 18____, both inclusive, contains a true account of _____ and every sum of money received by me or by any other person or persons by my order or, to my knowledge or belief, for my use or account, or in respect of the said rents and profits accrued due on _____ before the said _____ day of _____, on an account or in respect of the said personal estate, except what is included as received in my former account [or accounts] sworn by me.

**This is to
accord with
the order
appointing
the re-
ceiver.**

The day to which the account is made up.

2. The several sums of money mentioned in the said account, hereby verified to have been paid and allowed, have been actually

APPENDIX OF FORMS.

and truly so paid and allowed for the several purposes in the said account mentioned.

Appx. L.
Nos. 22—
25.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

4 W. X. and Y. Z. , the sureties named in the recognisance dated the of , 18 , are both alive, and neither of them has become bankrupt or insolvent.

No. 23.

Affidavit verifying Abstract.

In the High Court of Justice.

Chancery Division.

Mr. Justice

[Title.]

I, A. B., of, &c. , solicitor for , in this cause [or matter], make oath and say as follows :

I have carefully examined and compared the abstract written on sheets of paper, now produced and shown to me at the time of swearing this affidavit, and marked with the letter A, with the several deeds and documents thereby purported to be abstracted. Such abstract is a true and correct abstract of the said deeds and documents, so far as such deeds and documents relate to the hereditaments referred to in an order made in this action [or matter], dated the day of .

No. 24.

Affidavit verifying Engrossments of Deeds.

In the High Court of Justice.

Chancery Division.

Mr. Justice

[Title.]

I, A. B., of, &c. , make oath and say as follows :

1. I have carefully examined and compared the parchment writing now produced and shown to me at the time of swearing this affidavit, and marked with the letter A, with the draft or paper writing now produced and shown to me at the time of swearing this affidavit, and marked with the letter B, being the draft of the conveyance [or settlement, &c.] settled at the chambers of the judge to whom this cause [or matter] is assigned pursuant to the order made in this cause [or matter] dated .

2. The said parchment writing is a true and correct transcript and engrossment of the said draft.

No. 25.

Originating Summons.

In the High Court of Justice.

Chancery Division.

Mr. Justice

In the matter of the estate of A. B., deceased.

RULES OF THE SUPREME COURT.

Appx. L.
Nos. 25—
27.

Between C. D., Plaintiff,
and
E. F., Defendant.

Let E. F., the executor of the said A. B., attend at the chambers of Mr. Justice , at the Royal Courts of Justice, at the time specified in the margin [or at the foot] hereof, upon the application of C. D., of , Esq., who claims to be a creditor [or, as the case may be] upon the estate of the above-named A. B., for an order for the administration of the personal [or real and personal] estate of the said A. B.

Dated the day of , 18 .
(Seal.)

This summons was taken out by , of , solicitors for the above-named C. D.

The following note to be added to the original summons, and if the time is altered by indorsement the indorsement to be referred to is below:—

NOTE.—If you do not attend either in person or by your solicitor at the time and place above mentioned [or at the place above mentioned at the time mentioned in the indorsement hereon], such order will be made and proceedings taken as the judge may think just and expedient.

No. 26.

Request to set down cause for further consideration.

In the High Court of Justice.
Chancery Division.
Mr. Justice

A. v. B.

I request that this cause, the further consideration whereof was adjourned by order of the day of , may be set down for further consideration before Mr. Justice
C. D.,
Plaintiff's [or defendant's] solicitor.

No. 27.

Notice that cause has been set down for further consideration.

In the High Court of Justice.
Chancery Division.
Mr. Justice

A. v. B.

Take notice that this cause, the further consideration whereof was adjourned by the order of the day of , was set down for further consideration before Mr. Justice for the day of .
Dated, &c.

To Mr. ,
Solicitor for C. D.,
Solicitor for .

APPENDIX OF FORMS.

No. 28.

Appx. L.
No. 28.

Form of ordering Accounts and Inquiries.

This Court doth order that the following accounts and inquiry be taken and made; that is to say,

1. An account of the personal estate not specifically bequeathed of *A. B.*, deceased, the testator in the pleadings named, come to the hands of, &c.

2. An account of the testator's debts.

3. An account of the testator's funeral expenses.

4. An account of the testator's legacies and annuities (if any) given by the testator's will.

5. An inquiry what parts (if any) of the testator's said personal estate are outstanding or undisposed of.

And it is ordered that the testator's personal estate not specifically bequeathed be applied in payment of his debts and funeral expenses in a due course of administration, and then in payment of the legacies and annuities (if any) given by his will.

(If ordered.)

And it is ordered that the following further inquiries and accounts be made and taken; that is to say,

6. An inquiry what real estate the testator was seised of or entitled to at the time of his death.

7. An account of the rents and profits of the testator's real estate received by, &c.

8. An inquiry what incumbrances (if any) affect the testator's real estate, or any and what parts thereof.

(If Sale ordered.)

9. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.

10. An inquiry, what are the priorities of such last-mentioned incumbrances?

And it is ordered that the testator's real estate be sold with the approbation of the judge, &c., &c.

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

APPENDIX M.

Appx. M.

PAYMENT INTO AND OUT OF COURT.

1. Any party who intends to pay money into Court will on request at the Bank of England (Law Courts Branch), hereinafter called the Bank, be furnished with a form of request which must be filled up as hereinafter provided, and signed by such party or his solicitor. The money will then be received by the Bank, and an official receipt for the money will be given. Where the money is paid in upon a notice or pleading, such notice or pleading must be

RULES OF THE SUPREME COURT.

Appx. M. produced at the Bank at the time the money is paid in, and the receipt will be given on the margin thereof.

2. In filling up the request mentioned in the last preceding regulation, the party paying the money into Court shall enter thereon the letter, number, and short title of the action, and the name of the party by whom the payment is made, and also such one of the following statements as may be applicable to the circumstances under which the money is paid in, viz. :—

(a.) Where the money is paid in, under the provisions of Rule 5 of Order 22, an entry in the following form :—

A. Paid in in satisfaction of claim of above-named [name of party].

(b.) Where the money is paid in under the provisions of Rule 6 of Order 22, an entry in the following form :—

B. Paid in against claim of above-named [name of party], with defence, denying liability.

(c.) Where the money is paid in under the provisions of Rule 2 of Order 31, an entry in the following form :—

C. Paid in to "Security for Costs Account."

(d.) Where the money is paid in under an order or certificate, an entry in the following form :—

D. Paid in under order [or certificate] dated the day of

Upon the money being paid in, an entry corresponding with the entry in the request shall be made in the books of the Bank, and the receipt given by the Bank for the money, whether such receipt be indorsed on a notice or pleading, or be a separate document.

3. Where a defendant has paid money into Court under an Order, and desires to appropriate the whole or any part of such money to the whole or any specified portion of the plaintiff's claim, pursuant to Rule 11 of Order 22, he or his solicitor shall lodge at the Bank the original receipted order and a notice, entitled with the letter, number, and short title of the action, and in such one of the following forms as may be applicable to the case, viz. :—

A. Take notice that £ of the money in Court herein is appropriated by the above-named [name of party] to the satisfaction of claim of the above-named [name of party].

B. Take notice that £ of the money in Court herein is placed by the above-named [name of party] against the claim of the above-named [name of party], with a defence denying liability.

Upon such notice being lodged at the Bank, an entry corresponding thereto shall be made in the books of the Bank, and the money mentioned in the notice shall thereupon, for the purposes of payment out, be subject, in all respects, to regulations 4 and 5. A record of such appropriation shall be made by the Bank on the original receipted order, and the Bank will give a receipt in the usual form for the money so appropriated.

4. Where, upon the payment of the money into Court, the request contains a statement in the Form A. of regulations 2 and 3, unless an order restraining the payment out of Court has, prior to the issue of the cheque hereinafter mentioned, been lodged at the Bank, the money will be paid out on request to the plaintiff, or on his written authority to his solicitor.

5. Where, upon the payment of the money into Court, the request

APPENDIX OF FORMS.

contains a statement in the Form B. of regulations 2 and 3, the Appx. M.
following regulations shall apply:—

(a.) If the plaintiff accepts the sum paid in in satisfaction, he or his solicitor shall lodge at the Bank a notice, entitled with the letter, number, and short title of the action, and in the following form:—

“Take notice that the sum paid in herein has been accepted
“by the above-named [name of party] in satisfaction,
“and that I have given due notice of my acceptance
“thereof.”

Such notice shall be sufficient evidence to the Bank of compliance by the plaintiff with all the conditions entitling him under Order 22 to have the sum in question paid out to him, and such notice being lodged, the money will, on request, be paid out to the party mentioned in such notice, or on his written authority to his solicitor.

(b.) Unless such a notice as is above mentioned is lodged at the Bank, the money will not be paid out except on production at the Bank of an order of the Court or a judge.

6. Where, upon the payment of the money into Court, the request contains a statement in the Form C. of regulations 2 and 3, if, after the cause or matter has been finally disposed of, the party who paid the money in is entitled, under Order 31, Rule 27, to have the money paid out to him the taxing officer shall, on the taxation of the costs, give to such party a certificate that he is so entitled; and upon production of such certificate at the Bank, unless an Order restraining the payment out of Court has previously been lodged at the Bank, the money mentioned in the certificate will, on request, be paid out to the party mentioned in the certificate as entitled thereto, or on his written authority to his solicitor. Except as above provided, where, upon the payment of the money into Court, the request contains a statement in either of the Forms C. or D., the money will not be paid out except on production at the Bank of an order of the Court or a judge.

7. On bespeaking payment out of Court of money paid in on a notice or pleading, the original receipted notice or pleading must be lodged at the Bank.

8. Where money is to be paid out under an order or authority, on bespeaking the payment out the order or authority must be lodged at the Bank, and after having been examined by the Bank must be filed in the Filing Department of the Central Office; and a certificate of its having been so filed must be lodged at the Bank on receiving the cheque.

9. Every authority for the payment of money out of Court must be attested by a witness, whose residence and description must be added to his attestation.

10. Each sum paid into Court shall, as regards its payment out of Court, be deemed (when the time for payment out arrives) to be money standing to the credit of the masters.

11. All payments out shall be authorised by cheques upon the Bank, filled in by the Bank, and drawn in favour of the party claiming to receive the money. One clear day shall be allowed for the preparation of the cheque, and it shall be signed by one of the masters, and made payable to order, crossed specially or generally, and marked “not negotiable.”

12. Whenever the cheque is required to be drawn in favour of any

RULES OF THE SUPREME COURT.

Appx. M. person, not a solicitor of the Supreme Court, the Bank may require him to be identified by a solicitor. If such person shall be represented in the cause or matter by a solicitor, the identifying solicitor must be such solicitor; and in case a solicitor on requiring the cheque to be made payable to himself, or on identifying any person receiving such cheque, shall not be known at the Bank, the Bank may, at their discretion, require, on delivery of the cheque, the production by such solicitor of his annual certificate.

13. Where an order directs that money paid into Court is to be invested, the master to whom the cause or matter is assigned shall, in the case of an investment, direct the Bank to invest such money in the securities mentioned in the Order, and to pay the money necessary for such investment to the Government broker, conditionally upon his causing the securities to be transferred to the credit of the masters or persons named in the order or direction; and the said direction shall specify the title of the cause or matter to the credit of which the securities purchased, is to be placed in the books of the Bank.

14. The Bank, on receipt of a direction to invest, shall cause the securities mentioned therein to be purchased in the name of the masters, or other persons mentioned in the direction, and shall receive and retain the certificate issued by the body corporate or company, in whose books the securities purchased are registered, and the said certificate shall be sufficient evidence for all purposes that the purchase of such securities has been actually made; and the securities so purchased shall be placed in the books of the Bank to the same credit as that to which the money was paid in, unless the order of the Court or a judge otherwise directs.

15. The dividends on the securities purchased shall, as and when the same respectively are received, or become due, be placed in the books to the same credit as that to which the money was originally paid in.

16. When securities are to be sold, the master to whom the cause or matter is assigned shall direct the Bank to receive the proceeds of the sale, and place the same to the credit of such cause or matter, and the Bank shall, upon receipt of the necessary direction, cause the necessary sale to be carried out, and the proceeds of such sale to be placed to the credit of the cause or matter mentioned in the direction.

17. The books kept by the Bank relating to payments of money into and out of Court shall be open at all times for inspection by the masters; but no other person, not belonging to the Bank, shall be entitled to inspect such books without the written authority of a master.

18. In any case in which an affidavit is required, an office copy must be produced at the Bank. All forms to be used under these regulations shall be framed by the masters, with the approval of the Governor and Company of the Bank of England.

COSTS.

APPENDIX N.

Appx. N.

COSTS.

Higher Scale. Lower Scale.
£ s. d. £ s. d.

WRITS, SUMMONSES, AND WARRANTS.

Writ of summons for the commencement of any action	0	13	4	0	6	8
And for indorsement of claim, if special ...	0	5	0	0	5	0
Concurrent writ of summons... ..	0	6	8	0	6	8
Renewal of a writ of summons	0	6	8	0	6	8
Notice of a writ for service in lien of writ out of jurisdiction	0	5	0	0	4	0
Writ of inquiry	1	1	0	1	1	0
Writ of mandamus	1	1	0	0	10	0
Or per folio	0	1	4	0	1	4
Writ of subpoena ad testificandum or duces tecum	0	6	8	0	6	8
And if more than four folios, for each folio beyond four... ..	0	1	4	0	1	4
Writ or writs of subpoena ad testificandum for any number of persons not exceeding three, and the same for every additional number not exceeding three	0	6	8	0	6	8
Writ of distringas, pursuant to statute 5 Vict. c. 5	0	13	4	0	13	4
Writ of execution, or other writ to enforce any judgment or order	0	10	0	0	7	0
And if more than four folios, for each folio beyond four	0	1	4	0	1	4
Procuring a writ of execution or notice to the sheriff marked with a seal of renewal ...	0	6	8	0	6	8
Notice thereof to serve on sheriff ..	0	5	0	0	4	0
Any writ not included in the above... ..	0	10	0	0	7	0
These fees include all indorsements and copies, or præcipes, for the officer sealing them, and attendances to issue or seal, except where otherwise provided, but not the Court fees.						
Summonses to attend at judges' chambers ...	0	6	8	0	3	0
Or if special, at taxing officer's discretion, not exceeding	1	1	0	0	13	4
Copy for the judge, when required	0	2	0	0	2	0
Or per folio	0	0	4	0	0	4
Originating summons for proceedings in chambers in the Chancery Division at taxing officer's discretion, not exceeding ...	1	1	0	1	1	0

RULES OF THE SUPREME COURT.

Appx. N.

						Higher Scale.			Lower Scale.		
						£	s	d.	£	s	d.
And attending to get same and duplicate sealed, and at the proper office to file duplicate and get copies for service stamped ...						0	13	4	0	13	4
Copy for the judge						0	2	0	0	2	0
Or per folio						0	0	4	0	0	4
Indorsing same and copies under Order 55, Rule 22						0	6	8	0	6	8

SERVICES AND NOTICES.

Service, or filing in lieu of service, of any writ, summons, warrant, interrogatories, petition, order, or notice on a party who has not entered an appearance, and if not authorised to be served by post						0	5	0	0	5	0
If served at a distance of more than two miles from the nearest place of business or office of the solicitor serving the same, for each mile beyond such two miles therefrom						0	1	0	0	1	0
Where in consequence of the distance of the party to be served, it is proper to effect such service through an agent (other than the London agent), for correspondence in addition						0	7	0	0	7	0
Where more than one attendance is necessary to effect service, or to ground an application for substituted service, such further allowance may be made as the taxing officer shall think fit.											
For service out of the jurisdiction such allowance is to be made as the taxing officer shall think fit.											
Service where an appearance has been entered on the solicitor or party						0	2	6	0	2	6
Or if authorised to be served by post ...						0	1	6	0	1	6
Where any writ, order, and notice, or any two of them, have to be served together, one fee only for service is to be allowed.											
In addition to the above fees, the following allowances are to be made:—											
As to writs, if exceeding two folios, for copy for service, per folio beyond such two ...						0	0	4	0	0	4
As to summons to attend at the judges' chambers, for each copy to serve						0	2	0	0	1	0
Or per folio						0	0	4	0	0	4
As to notices in proceedings to wind up companies, for preparing or filling up each notice to creditors to attend and receive debts, and to contributories to settle list of contributories						0	1	0	0	1	0

COSTS.

	Higher Scale.			Lower Scale.			Appx. N.
	£	s.	d.	£	s.	d.	
And for preparing or filling up each notice to contributories to be served with a general order for a call, or an order for payment of a call	0	1	0	0	1	0	
And for drawing notice to be served on contributories or creditors of a meeting, per folio	0	1	0	0	1	0	
For each copy of the last-mentioned notice to serve, per folio	0	0	4	0	0	4	
For preparing or filling up for service in any other cause or matter, each notice to creditors to prove claims, and each notice that cheques may be received, specifying the amount to be received for principal and interest, and costs, if any	0	1	0	0	1	0	
For preparing notice to produce on the trial or hearing of an action, or notice to admit If special or necessarily long, such allowance as the taxing officer shall think proper, not exceeding per folio	0	7	6	0	5	0	
And for each copy such allowance as the taxing officer shall think proper, not exceeding, per folio	0	1	0	0	0	8	
For preparing notice of motion	0	0	4	0	0	4	
Or per folio	0	5	0	0	3	0	
Copy for service	0	1	0	0	1	0	
Or per folio	0	1	0	0	1	0	
For preparing any necessary or proper notice, not otherwise provided for, or any demand, pursuant to Order 7, Rules 1 and 2 Or if special, and necessarily exceeding three folios, for preparing same, for each folio beyond three	0	0	4	0	0	4	
And for each copy for service, per folio beyond such three	0	1	6	0	1	6	
Copies for service of interrogatories and petitions, and of orders with necessary notices (if any) to accompany, per folio	0	1	0	0	1	0	
Except as otherwise provided, the allowances for services include copies for service.	0	0	4	0	0	4	
Where notice of filing affidavits is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed together.	0	0	4	0	0	4	
In proceedings to wind up a company, the usual charges relating to printing shall be allowed in lieu of copies for service, where the fee for copies would exceed the charges for printing, and amount to more than 3l.							
Where any appointment is or ought to be adjourned, service of a notice of the adjournment, or next appointment, is not to be allowed.							

RULES OF THE SUPREME COURT.

Appx. N.

Higher Scale. Lower Scale.
£ s. d. £ s. d.

APPEARANCES.

Entering any appearance	0	6	8	0	6	8
If entered at one time, for more than one person, for every defendant beyond the first	0	2	0	0	1	0
If a person appearing to a writ of summons to recover land limits his defence by his memorandum of appearance, in addition to the above	0	6	8	0	6	8

INSTRUCTIONS.

To sue or defend	0	13	4	0	6	8
For statement of claim or special case ...	2	2	0	0	13	4
For indorsement of writ of summons when no further statement of claim	1	1	0	0	13	4
For originating summons 6s. 8d., or not to exceed	1	1	0	1	1	0
For defence or further defence	0	13	4	0	6	8
For counter-claim	0	13	4	0	6	8
For reply when defendant sets up a counter-claim	1	1	0	0	13	4
For reply or further reply in any other case with or without joinder of issue	0	13	4	0	6	8
For confession of defence	0	13	4	0	6	8
For joinder of issue without other matter ...	0	13	4	0	6	8
For special petition, any other pleading (not being a summons), and interrogatories for examination of a party or witness ...	0	13	4	0	6	8
To amend any pleading	0	13	4	0	6	8
For affidavit in answer to interrogatories, and other special affidavits	0	6	8	0	6	8
To appeal against order of Court or judge, and to appear thereon	1	1	0	0	13	4
To add parties by order of Court or judge ...	0	13	4	0	6	8
For counsel to advise on evidence when the evidence in chief is to be taken orally ...	0	6	8	0	6	8
Or not to exceed	1	1	0	1	1	0
For counsel to make any application to a Court or judge where no other brief ...	0	10	0	0	6	8
For brief on motion for special injunction ...	1	1	0	0	13	4
For brief on hearing or trial of action upon notice of trial or notice for judgment given, whether such trial be before a judge, with or without a jury, or before an official or special referee, or on trial of an issue of fact before a judge, commissioner, or referee, or on assessment of damages ...	2	2	0	1	1	0

COSTS.

Higher Scale. Lower Scale. Appx. N.
£ s. d. £ s. d. ————

For such brief, and for brief on the hearing of an appeal when witnesses are to be examined or cross-examined, such fee may be allowed as the taxing officer shall think fit, having regard to all the circumstances of the case, and to other allowances, if any, for attendances on witnesses and procuring evidence.

The fees for instructions for brief are to apply to a hearing on further consideration in Court only where an order for accounts and inquiries was made without such hearing or trial, as above mentioned.

DRAWING PLEADINGS AND OTHER DOCUMENTS.

Statement of claim	1	1	0	0	10	0
Or per folio	0	1	0	0	1	0
Defence	0	10	0	0	5	0
Or per folio	0	1	0	0	1	0
Counterclaim	1	1	0	0	5	0
Or per folio	0	1	0	0	1	0
Reply, with or without joinder of issue, confession of defence, joinder of issue without other matter, and any other pleading (not being a petition or summons) and amendments of any pleading	0	10	0	0	5	0
Or per folio	0	1	0	0	1	0
Particulars, breaches, and objections, when required, and one copy to deliver	0	6	8	0	5	0
Or such amount as the taxing officer shall think fit, not exceeding per folio	0	1	0	0	0	8
If more than one copy to be delivered for, each other copy, per folio	0	0	4	0	0	4
Special case, whether original or in an action, affidavits in answer to interrogatories and other special affidavits, special petitions, and interrogatories, per folio	0	1	0	0	1	0
Brief, on trial or hearing of cause, issue of fact, assessment of damages, examination of witnesses, special case and petition before a Court or judge, sheriff, commissioner, referee, examiner, or officer of the court, when necessary and proper in addition to pleadings, including necessary and proper observations, per folio	0	1	0	0	1	0
Brief on application to add parties	0	10	0	0	6	8
Or per folio	0	1	0	0	1	0
Brief on further consideration, per sheet of 10 folios	0	6	8	0	6	8
Accounts, statements, and other documents for the judges' chambers, when required, not exceeding per folio	0	1	0	0	0	8

RULES OF THE SUPREME COURT.

Appx. H.

	Higher Scale.			Lower Scale.		
	£	s.	d.	£	s.	d.
Advertisements to be signed by judge's clerk, including attendance therefor ...	0	13	4	0	6	8
Bills of costs for taxation, including copy for the taxing officer	0	0	8	0	0	

COPIES.

Of pleadings, briefs, and other documents where no other provision is made, at per folio	0	0	4	0	0	4
Where, pursuant to Rules of Court, any pleading, special case or petition of right, or evidence is printed, the solicitor of the party printing shall be allowed for a copy for the printer (except when made by the officer of the Court), at per folio	0	0	4	0	0	4
And for examining the proof print, at per folio	0	0	2	0	0	2
And for printing the amount actually and properly paid to the printer, not exceeding per folio	0	1	0	0	1	0
And in addition for every 20 beyond the first 20 copies, at per folio	0	0	1	0	0	1
And where any part shall properly be printed in a foreign language, or as a fac-simile, or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the taxing officer shall think reasonable.						
These allowances are to include all attendances on the printer.						
The solicitor for a party entitled to take printed copies shall be allowed, for such number of copies as he shall necessarily or properly take, the amount he shall pay therefor.						
In addition to the allowances for printing and taking printed copies, there shall be allowed for such printed copies as may be necessary or proper for the following, but for no other purposes (videlicet) :—						
Of any pleading for delivery to the opposite party, or filing in default of appearance ...						
Of any special case for filing... ..						
Of any petition of right for presentation, if presented in print, and for the solicitor of the Treasury, and service on any party ...						

COSTS.

	Higher Scale.			Lower Scale.			Appx. N.
	£	s.	d.	£	s.	d.	—
Of any pleading, special case, or petition of right, for the use of the Court or judge ...							
Of any affidavit to be sworn to in print ...							
And of any pleading, special case, petition of right, or evidence for the use of counsel in Court, and in country agency causes when proper to be sent as a close copy for the use of the country solicitor, at per folio ...	0	0	3	0	0	2	
Such additional allowances for printed copies for the Court or judge, and for counsel, are not to be made where written copies have been made previously to printing, and are not in any case to be made more than once in the progress of the cause.							
Close copies, whether printed or written, are not to be allowed as of course, but the allowance is to depend on the propriety of making or sending the copies, which in each case is to be shown and considered by the taxing officer.							
Inserting amendments in a printed copy of any pleading, special case, or petition of right, when not reprinted ...	0	5	0	0	1	0	
Or per folio ...	0	0	4	0	0	4	

PERUSALS.

Of statement of claim, defence, reply, joinder of issue, and other pleading (not being a petition in a pending cause or matter, or summons other than an originating summons), by the solicitor of the party to whom the same are delivered ...	0	13	4	0	6	8
Or per folio ...	0	0	4	0	0	4
Of amendment of any such pleading in writing ...	0	6	8	0	6	8
Or per folio ...	0	0	4	0	0	4
If same reprinted ...	0	13	4	0	6	8
Or per folio of amendment ...	0	0	4	0	0	4
Of interrogatories to be answered by a party by his solicitor ...	0	13	4	0	6	8
Or per folio ...	0	0	4	0	0	4
Of special case by the solicitor of any party except the one by whom it is prepared ...	0	13	4	0	6	8
Or per folio ...	0	0	4	0	0	4
Of copy order to add parties, notice of defendant's claim against any person not a party to the action under Order 16, Rule 49, and of defendant's defence and counter-claim served on a person not a party under Order 21, Rule 13, by the solicitor of						

RULES OF THE SUPREME COURT.

Appx. N.

	Higher Scale.			Lower Scale.		
	£	s	d	£	s	d
the party served therewith, and in these several cases the perusal of the plaintiff's statement of claim is also to be allowed unless the solicitor has been previously allowed such perusal	0	13	4	0	6	8
Or per folio	0	0	4	0	0	4
Of notice to produce on trial or hearing of action, and notice to admit by the solicitor of the party served	0	13	4	0	6	8
Or (if to admit facts) under Order 32, Rule 4, per folio	0	1	0	0	1	0
Of affidavit in answer to interrogatories by the solicitor of the party interrogating, and of other special affidavits by the solicitor of the party against whom the same can be read, per folio	0	0	4	0	0	4

ATTENDANCES.

To obtain consent of next friend to sue in his name or of a guardian ad litem ...	0	13	4	0	6	8
To deliver, or file in lieu of delivery, any pleading (not being a petition or summons) and a special case	0	6	8	0	3	4
To inspect, or produce for inspection, documents pursuant to a notice to admit ...	0	13	4	0	6	8
Or per hour	0	6	8	0	6	8
To examine and sign admissions	0	13	4	0	6	8
To inspect, or produce for inspection, documents referred to in any pleading, notice in lieu of pleading, or affidavit, pursuant to notice under Order 31, Rule 14 ...	0	6	8	0	6	8
Or per hour	0	6	8	0	6	8
To obtain or give any necessary or proper consent	0	6	8	0	6	8
To obtain an appointment to examine witnesses	0	6	8	0	6	8
On examination of witnesses before any examiner, commissioner, officer, or other person	0	13	4	0	13	4
Or according to circumstances, not to exceed	2	2	0	2	2	0
Or if without counsel, not to exceed ...	3	3	0	3	3	0
On deponents being sworn, or by a solicitor or his clerk to be sworn, to an affidavit in answer to interrogatories or other special affidavit	0	6	8	0	6	8
On a summons at judges' chambers... ..	0	6	8	0	6	8
Or according to circumstances, not to exceed	1	1	0	1	1	0
In the Chancery Division, all allowances for attending at the judges' chambers are to be by the judge or chief clerk as heretofore.						

COSTS.

	Higher Scale.			Lower Scale.			Appx. N.
	£	s.	d.	£	s.	d.	
To file chief clerks' and taxing masters' certificates, and get copy marked as an office copy	0	6	8	0	6	8	
On counsel with brief or other papers—							
If counsel's fee one guinea	0	6	8	0	3	4	
If more and under five guineas	0	6	8	0	6	8	
If five guineas and under 20 guineas	0	13	4	0	6	8	
If 20 guineas	1	1	0	0	13	4	
If 40 guineas or more	2	2	0	—			
On consultation or conference with counsel...	0	13	4	0	13	4	
To enter or set down action, special case, or appeal, for hearing or trial... ..	0	6	8	0	6	8	
In Court on motion of course and on counsel and for order	0	13	4	0	10	0	
To present petition for order of course and for order	0	13	4	0	10	0	
In Court on every special motion, each day...	0	13	4	0	6	8	
On same when heard each day	0	13	4	0	13	4	
Or according to circumstances, not to exceed	2	2	0	2	2	0	
On special case, or special petition, or application adjourned from the judge's chambers, when in the special paper for the day, or likely to be heard	0	10	0	0	6	8	
On same when heard	1	1	0	0	13	4	
Or according to circumstances, not to exceed	2	2	0	2	2	0	
On hearing or trial of any cause, or matter, or issue of fact, in London or Middlesex, or the town where the solicitor resides or carries on business, whether before a judge with or without a jury, or commissioner, or referee, or on assessment of damages, when in the paper... ..	0	10	0	0	10	0	
When heard or tried	1	1	0	0	13	4	
Or according to circumstances, not to exceed	3	3	0	3	3	0	
When not in London or Middlesex, nor in the town where the solicitor resides or carries on business, for each day (except Sundays) he is necessarily absent... ..	3	3	0	3	3	0	
And expenses (besides actual reasonable travelling expenses) each day, including Sundays	1	1	0	1	1	0	
Or if the solicitor has to attend on more than one trial or assessment at the same time and place, in each case	1	11	6	1	1	0	
The expenses in such case to be rateably divided.							
To hear judgment when same adjourned	0	13	4	0	6	8	
Or according to circumstances	1	1	0	0	13	4	
To deliver papers (when required) for the use of a judge prior to a hearing	0	6	8	0	6	8	
If more than one judge	0	13	4	0	13	4	
On taxation of a bill of costs	0	6	8	0	6	8	
Or according to circumstances, not to exceed	2	2	0	2	2	0	

RULES OF THE SUPREME COURT.

Appx. N.

Higher Scale. Lower Scale.
£ s. d. £ s. d.

Unless the same shall necessarily occupy so much time that the taxing officer shall consider such amount inadequate, in which case he may allow such further fee as he shall think proper.

In actions and matters for purposes within the cognizance of the Court of Chancery before the principal Act came into operation, such further fee as the taxing officer may think fit, not exceeding the allowances heretofore made.

To obtain or give an undertaking to appear.. 0 6 8 0 6 8

To present a special petition, and for same answered ... 0 6 8 0 6 8

On printer to insert advertisement in Gazette 0 6 8 0 6 8

On printer to insert same in other papers, each printer ... 0 6 8 —

Or every two ... — 0 6 8

On registrar to certify that a cause set down is settled, or for any reason not to come into the paper for hearing ... 0 6 8 0 6 8

For an order drawn up by chief clerk, and to get same entered ... 0 6 8 0 6 8

On counsel to procure certificate that cause proper to be heard as a short cause, and on registrar to mark same... 0 6 8 0 6 8

To mark conveyancing counsel or taxing master ... 0 6 8 0 6 8

For preparing and drawing up an order made at chambers in proceedings to wind up a company and attending for same, and to get same entered ... 0 13 4 0 13 4

And for engrossing every such order, per folio 0 0 4 0 0 4

NOTE.—An order of course means an order made on an ex parte application, and to which a party is entitled as of right on his own statement and at his own risk.

To examine an abstract of title with deeds, per hour, in a cause or matter ... 0 10 0 0 10 0

To produce deeds for such purpose, per hour 0 6 8 0 6 8

OATHS AND EXHIBITS.

Commissioners to take oaths or affidavits.

For every oath, declaration, affirmation, or attestation upon honour, in London or the country ... 0 1 6 0 1 6

The solicitor for preparing each exhibit in town or country ... 0 1 0 0 1 0

The commissioner for marking each exhibit.. 0 1 0 0 1 0

COSTS.

Appx N.

Higher Scale.	Lower Scale.
£ s. d.	£ s. d.

TERM FEES.

For every term commencing on the day the sittings in London and Middlesex of the High Court of Justice commence, and terminating on the day preceding the next such sittings, in which a proceeding in the cause or matter by or affecting the party, after appearance entered, shall take place

0 15 0 0 15 0

And further, in country agency causes or matters, for letters

0 6 0 0 6 0

Where no proceeding in the cause or matter is taken which carries a term fee, a charge for letters may be allowed, if the circumstances require it.

In addition to the above an allowance is to be made for the necessary expense of postages, carriage, and transmission of documents.

APPENDIX O.

Appx. O.

(1.) The several Rules, Orders, and Forms contained in the Schedule and Appendix to the Supreme Court of Judicature Act (1873) Amendment Act.

(2.) The additional Rules to the Judicature Act, 1875.

(3.) The Rules of the Supreme Court, December, 1875.

(4.) The Rules of the Supreme Court, February, 1876.

(5.) The Rules of the Supreme Court, June, 1876.

(6.) The Rules of the Supreme Court, December, 1876.

(7.) The Rules of the Supreme Court, May, 1877.

(8.) The Rules of the Supreme Court (Costs).

(9.) The Rules of the Supreme Court, June, 1877.

(10.) The Rules of the Supreme Court, November, 1878.

(11.) The Rules of the Supreme Court, March, 1879.

(12.) The Rules of the Supreme Court, December, 1879.

(13.) The Rules of the Supreme Court, April, 1880.

(14.) The Rules of the Supreme Court, May, 1880.

(15.) Rules of the Supreme Court, May, 1883.

(16.) The Regulæ Generales of Hilary Term 1853, dated 11th January, 1853 (except the Rules as to juries).

(17.) Regulæ Generales, as to Pleading made by the judges in pursuance of the Common Law Procedure Act, 1852, dated the 10th of May, 1853.

(18.) The Rules under the 6th section of the Debtors Act, 1859.

(19.) The Chancery Consolidated General Orders of 1860.

RULES OF THE SUPREME COURT.

APPX. C.

(20.) The Chancery Orders dated—

March 6th, 1860.

March 20th, 1860.

February 1st, 1861.

February 5th, 1861.

July 13th, 1861.

January 1st, 1862.

May 16th, 1862.

May 27th, 1865.

May 7th, 1866.

November 22nd, 1866.

April 17th, 1867.

(21.) The Chancery Regulations dated August 8th, 1857, and March 15th, 1860.

(22.) The Rules, Orders, and Regulations for the High Court of Admiralty of England, 1859 and 1871.

(Signed)

SELBORNE, C.

COLERIDGE, C.J.

W. B. BRETT, M.R.

JAMES HANNEN.

NATH. LINDLEY, L.J.

EDW. FRY, L.J.

C. E. POLLOCK, B.

H. MANISTY, J.

HENRY COTTON, L.J.

**(Signed in respect of Rules as to
sittings of Court of Appeal.)**

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